

INTERIM REPORT NO. 23
THE 3 OCTOBER 2007 MOUNT SOLEDAD
GEOLOGICAL EVENT

REPORT OF THE
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INTRODUCTION

The San Diego City Attorney is issuing this 23rd Interim Report to ensure maximum transparency and factual accuracy in the events that preceded and comments that proceeded the geological movement that occurred on 3 October 2007 on Soledad Mountain in La Jolla, California.

On the morning of 10 October 2007, Mayor Jerry Sanders released close to 3,000 pages of City e-mails, documents, and work orders that detail the City's operations and responses to residents in the months preceding the Soledad Mountain event.¹ The Mayor stated:

Today my office will release a portion of the public documents related to events preceding the Mount Soledad Landslide on Wednesday, October 3rd. In the name of transparency and equal access to public documents, I thought it was important to get these documents out just as soon as possible...The documents being released cover July 18th, 2007, through the present. While not complete, the documents provide a snapshot of how the City responded to the concerns of homeowners about soil movement and utility separations in the area.

In this 23rd Interim Report, the City Attorney wishes to further the interest and "transparency and equal access to public documents" by organizing the documents released by Mayor Jerry Sanders into chronological order and important content to better "provide a snapshot of how the City responded to the concerns of homeowners about soil movement and utility separations in the area." This report is not intended, nor should it be read as a conclusion or an admission as to the causes of the dirt migration on Soledad Mountain. This Report is based upon the preliminary investigation and the documents obtained to date and it should not be construed as an admission of or findings by the City of San Diego. The investigation and fact-finding are continuing. This Report is intended by the City Attorney solely as a report to the public as to the information available to date and not as findings of fact or conclusions of law as to fault or liability.

This 23rd Interim Report also logs the comments that various City officials made to the public and to the news media following the soil migration event. The comments of the City Attorney have been cited by some as "creating exposure for the City" and the implementation of a solitary "course of action." The transcripts of these comments will illustrate those claims are unfounded and indefensible.

The report will also show that the City Council's hiring of outside counsel to represent the City in legal issues related to the soil movement event on Mount Soledad

¹ Some of the documents released to the public may have been protected by the attorney-client privilege. By releasing these documents to the public and posting them on the Mayor's Web site, the Mayor waived the attorney-client privilege. These are now public documents. 10 October 2007 transcript of Mayor Jerry Sanders press conference. 10 October 2007; Office of Mayor Jerry Sanders Press Release; "Sanders Releases Public Documents Related to La Jolla Landslide." (Exhibit 1)

represent a contravention of San Diego City Charter § 40. Under Charter section 40 the City Attorney is counsel for the City. There are a limited number of circumstances under which other counsel can act as the City's lawyer. However, no such exception occurred in the case of the slide on Mount Soledad. The stated reason the Mayor gave for the decision to retain outside counsel was that the City Attorney made comments that compromised the City's legal position. However, the facts, as detailed below, show the Mayor was incorrect and that no such statements were made by the City Attorney. The record, as stated below, illustrates that the Mayor and the City Attorney actually took similar stances throughout the days following the near-catastrophic dirt migration phenomenon that occurred on Mount Soledad.

THE FIRST PROBLEMS ON SOLEDAD MOUNTAIN ROAD

A work order was issued by the Water Department to repair a water pipe located at 6186 Mount Soledad Road on 8 June 2007. According to the work order, a pipe was damaged and “REPAIRS NEEDS TO SODER PIPE.” The work was completed later that day.²

Days later, another work order was issued for what would become a growing problem on Soledad Mountain Road. On 15 June 2007, Sewer/Water Infrastructure Management issued a second work order to stop flooding related to the leak at the 5200 block of Soledad Mountain Road. The dispatcher's description of the problem on the work order stated, “TURN OFF IMMEDIATELY – FLOODING REAL BAD.”³

The Water Department set out to find the source of the leak and on 18 June 2007 – three days after the work order to stop the flood was sent – a third work order was issued to locate the leak. The work order stated, “PROVIDE FIELD ASSISTANCE TO ISOLATE WATER MAIN.”

Johnny Mitchell, water systems technician for the Water Department, sent an e-mail on 18 June 2007, to notify City officials that an “emergency shutdown” would occur at 11:08 a.m. for residential water customers on Soledad Mountain Road to allow City workers to locate the water leak.⁴ Mitchell wrote, “We are reporting the following water main emergency shutdown...Significant Elements: Water Ops. Crews pulled existing water service from the main. Minor street damage, no media, no environmental issues.” Mitchell sent the e-mail to David Jarrell, assistant deputy chief of the City's Public Works Department.

² 8 June 2007 Sewer/Water Infrastructure Management – “Work Order Data Entry.” Data Steward: Michael Basom. (Exhibit 2)

³ 15 June 2007 Sewer/Water Infrastructure Management – “Work Order Data Entry.” (Exhibit 3)

⁴ 18 June 2007 e-mail from Johnny Mitchell, water systems technician for the Water Department, to David Jarrell, assistant deputy chief of the City's Public Works Department. (Exhibit 4)

Jarrell forwarded the message to the City Council District 2 office, which represents that portion of the City. Jarrell sent the e-mail to Jamie Fox-Rice, a City Council representative, and Steve McNally, chief of staff for District 2. The e-mail was carbon copied to Bill Harris, deputy press secretary for Mayor Jerry Sanders; Alex Ruiz, assistant director of the Water Department; Jeff Gattas, then-director of council affairs for Mayor Jerry Sanders; and Richard Haas, deputy chief operating officer for the City's Public Works Department. This 18 June 2007 e-mail is the first communication released by the Mayor's Office that reveals high-ranking city officials and representatives of elected City officials were notified that water leaks were occurring on Soledad Mountain Road.

On 26 June 2007, another work order was issued by the Sewer/Infrastructure Management to shut off the water and repair a water main problem on Soledad Mountain Road.⁵

About a week later, on 2 July 2007, another work order was issued to "turn off" the water service to the pipe on Soledad Mountain Road.⁶ The job was assigned for repair later that day.

On 5 July 2007, a work order was issued by Sewer/Water Infrastructure Management to repair a "METER LEAK" on the 6100 block of Mount Soledad Road.⁷ A City team responded.

Two days later, on 7 July 2007, Mount Soledad resident Robert Peavy called the City on 7 July 2007, to complain about the condition of the street. A work order was then issued for City workers to report to the 5900 block of Soledad Mountain Road to analyze the issue. According to comments submitted by City employees, a gasket was replaced.⁸

Thus far, all of the problems with the water pipes and the streets were exclusive to Soledad Mountain Road. Shortly thereafter, however, calls were received by the City from residents of Desert View Drive, which runs parallel to Soledad Mountain Road, but at a lower elevation.

On 10 July 2007, Desert View Drive resident "Loretta" called the City to notify it of a "meter leak." The City issued a work order to check on the complaint.⁹ The

⁵ 26 June 2007 Sewer/Water Infrastructure Management – "Work Order Data Entry." (Exhibit 5)

⁶ 2 July 2007 Sewer/Water Infrastructure Management – "Work Order Data Entry." (Exhibit 6)

⁷ 5 July 2007 Sewer/Water Infrastructure Management – "Work Order Data Entry." (Exhibit 7)

⁸ 7 July 2007 Sewer/Water Infrastructure Management – "Work Order Data Entry." (Exhibit 8)

⁹ 10 July 2007 Sewer/Water Infrastructure Management – "Work Order Data Entry." (Exhibit 9)

problem persisted. Two days later, additional work orders were issued by the City to check on a series of “METER LEAK[s]” on Soledad Mountain Road.¹⁰

The first work order that clearly documents water-related geological movement was written by a City employee on 18 July 2007. Responding to a series of work orders¹¹ to repair a spigot and pick up water that had collected on the streets, City workers arrived at the 5700 block of Soledad Mountain Road. The situation caused a worker to comment, “REAL BAD LEAK – CREATING A SINK HOLE.....YG.”¹² City crews began to repair the problem and at 7:53 p.m. requested that water service be shut off, affecting 30 homes. The workers repaired the problem at 2:20 a.m. and requested that a water truck be dispatched to remove water that had collected in the street and a street sweeper truck to assist in the cleanup.¹³ The severity of this problem drew the attention of residents who began to contact City officials.

RESIDENTS CALL IN

Tom Crabbe, a resident of Soledad Mountain Road, called Janet Bruce, executive secretary to Water Department Director Jim Barrett, to explain his concerns about the consistent water leaks. Ms. Bruce sent Barrett an e-mail to explain the call. She wrote:

Jim, Mr. Tom Crabbe (619) 997-4359 called asking to speak to you regarding concerns that he and his neighbors have.

Emergency work was done last night by the Water Department. The crew did a great job. **However, he and his neighbors are very concerned because something is going on in the area.** The street that was patched last March has separated and the street appears to have dropped 3 inches....They feel the ground may be shifting which may have caused the break last night. [Emphasis original].¹⁴

This e-mail notified City officials about problems on Soledad Mountain Road. Bruce continued:

¹⁰ 12 July 2007 Sewer/Water Infrastructure Management – “Work Order Data Entry.” (Exhibit 10)

¹¹ 18 July 2007 Sewer/Water Infrastructure Management – “Work Order Data Entry.” Sewer/Water Infrastructure Management – “Work Order Data Entry.” 19 July 2007 Sewer/Water Infrastructure Management – “Work Order Data Entry” and “SR Comments.” (Exhibit 11)

¹² See at *Id.*

¹³ See at *Id.*

¹⁴ 19 July 2007 e-mail from Janet Bruce, executive secretary, to Jim Barrett, director of the City of San Diego Water Department. (Exhibit 12)

There was major damage in the past on Desert View Drive (to 4 homes) which is below their street. They feel that the City should send out a geologist to see if something is happening in the area, before any major occurs.¹⁵

Thus, by mid-July, Barrett was notified that this area had experienced problems in the past. Perhaps more importantly, the residents of the area specifically requested a geological investigation because they felt that their safety was in danger.

Barrett did not call Crabbe back immediately. Rather, Barrett forwarded the e-mail to other high-ranking City officials on 19 July 2007, and requested a conference to discuss the water breaks and how the City would respond to Mr. Crabbe. Barrett wrote:

Alex – we need to chat about this before I call Mr. Crabbe... I believe that this is about to become another Caminito Avola and the proximity to Desert View only exacerbates the concern. A three inch drop in four months is not normal...even for trend subsistence.¹⁶

The e-mail illustrates that Barrett was aware of the significance of the potential problems in the area by stating that it was “not normal” for the street to drop three-inches, which Crabbe described. Barrett also points to Caminito Avola, an area of La Jolla the City has monitored for soil movement and water pipe leaks,¹⁷ as a worst case scenario. The e-mail was carbon copied to a bevy of high-ranking City officials including: Alex Ruiz, assistant director of the Water Department; Patti Boekamp, director of the City’s Engineering and Capital Projects Department; Richard Haas, deputy chief operating officer for the City’s Public Works Department; and David Jarrell, assistant deputy chief of the City’s Public Works Department. All of these individuals were notified about the potential severity of the problem.

Thyme Curtis, a representative for Council member Kevin Faulconer, also received an alarming phone call from Tom Crabbe on 19 July 2007, and relayed the message to high Rich Haas, deputy chief operating officer for the City’s Public Works Department. Curtis wrote:

Hi Rich,

A constituent named Tom Crab (619) 997.4359, 5703 Soledad Mountain road) just called and is very concerned about Soledad Mtn Road, specifically in front of 5715 Soledad Mountain Road. He said that the

¹⁵ See at *Id.*

¹⁶ 19 July 2007 e-mail from Jim Barrett, director of the Water Department, to Alex Ruiz, assistant director of the Water Department. (Exhibit 12)

¹⁷ Sauer, Mark; and Barfield, Chet; “More of Mount Soledad may be prone to collapse | Geologists, residents monitoring seaward slide,” *San Diego Union-Tribune*; 6 October 2007. (Exhibit 13)

street has been sinking and cracking for the past few months, and back in March 2007 he reported a crack in the street that was subsequently patched. Last night a pipe cracked and is currently being fixed by city crews, but Mr. Crab believes something more is going on underneath the street, that it is sinking or moving. He's hoping a geologist or engineer can take a look before something major happens.¹⁸

The City continued to follow the problem and repair the leaks as they were reported.

CITY'S FIRST REACTIONS

Haas forwarded the message to Jim Barrett, Alex Ruiz, and Jim Fisher, deputy director of the Water Department. Similar to their prior response to the earlier e-mail, these City officials urged patience and set a meeting to formulate a response to residents. Fisher wrote an e-mail to Ruiz stating, "Lets [sic] talk on Monday to determine how we want to look further into this."¹⁹ More City officials would soon weigh in on the issue.

Patti Boekamp, director of Engineering and Capital Projects and recipient of Barrett's first e-mail, began reaching out to City officials on 23 July 2007. Boekamp sent an e-mail to Hossein Ruhi, deputy director for Engineering and Capital Projects, and suggested sending geologists employed by the City to analyze the site. Boekamp recommended sending Rob Hawk, senior geologist for the City's Development Services Department.²⁰

That same day, 23 July 2007, the City received two more calls about problems on Soledad Mountain Road. Two more work orders were issued. The first work order was to plug a crack²¹ and the second dispatched a truck to collect water that had been leaking.²²

¹⁸ 19 July 2007 e-mail from Thyme Curtis, council representative for Council member Kevin Faulconer, to Richard Haas, Deputy Chief Operating Office for Public Works. (Exhibit 14)

¹⁹ 20 July 2007 e-mail from Jim Fisher, deputy director of the City's Water Department, to Alex Ruiz, assistant director of the City's Water Department. Subject: "Re: Fwd: Re: Soledad Mtn Road." (Exhibit 14)

²⁰ 23 July 2007 e-mail from Patti Boekamp, director of Engineering and Capital Projects, to Hossein Ruhi, deputy director for Engineering and Capital Projects. Subject: "Fwd: 5700 block of Soledad Mt. Road – Concerns of Citizens." (Exhibit 15)

²¹ 23 July 2007 /Water Infrastructure Management – "Work Order Data Entry." Job Desc: Hot Patch & Stripout 8 x 8 ptach [sic]." (Exhibit 16)

²² 23 July 2007 /Water Infrastructure Management – "Work Order Data Entry." Job Desc: "Pickup Wtr Wagon." (Exhibit 17)

Boekamp followed up her request to have Rob Hawk look at the site in an e-mail sent to Hossein Ruhi on 24 July 2007. Boekamp wrote:

We have Rob Hawk, a Senior Geologist – he may have been here when Desert View had to be pinned back to the hillside...I was out late last week, so perhaps you already got someone to have Rob go take a look.²³

Hawk agreed to take a look at the site.²⁴

Later that day, Hawk visited the portion of Soledad Mountain Road that had been plagued by leaks and cracks in the road. He sent an e-mail to Ruhi, Barrett, and Boekamp that concluded there was no chance of a major landslide. Hawk wrote:

I visited the site this morning. After examining the repairs and the pavement crack, as well as surrounding improvements, I concluded that there was no discernable evidence for a major landslide. It is still possible that some large-scale movement has taken place, but I would expect to see more movement reflected in the street.²⁵

Hawk suggested that the cracks and the decline of the street described by Mr. Crabbe may be the result of water leaks underground:

The crack in the street, located approximately 50 feet to the north of the repair patch, appears to be caused by the settlement of the paving section along the utility trench, likely sewer but close to where I guessed the water line to be. It is my understanding that the water main has had a previous major leak along this section, and that water penetrated the sewer trench. It may be prudent to pothole the portion of the pavement that is sinking whether or not a void exists underneath, prior to adding additional patching material.²⁶

²³ 23 July 2007 e-mail from Patti Boekamp, director of Engineering and Capital Projects, to Hossein Ruhi, deputy director for Engineering and Capital Projects. (Exhibit 18)

²⁴ 24 July 2007 e-mail from Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department, to Janet Bruce, executive secretary to the Director of the City's Water Department. (Exhibit 18)

²⁵ 24 July 2007 e-mail from Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department, to Patti Boekamp, director of Engineering and Capital Projects; Hossein Ruhi, deputy director for Engineering and Capital Projects; and Jim Barrett, director of the City's Water Department. (Exhibit 19)

²⁶ 24 July 2007 e-mail from Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department, to Patti Boekamp, director of Engineering and Capital Projects; Hossein Ruhi, deputy director for Engineering and Capital Projects; and Jim Barrett, director of the City's Water Department. (Exhibit 19)

Hawk concluded the e-mail with some historical perspective and pointed out that there have been landslides in this exact location in the past. Hawk wrote:

I have attached two photos from the historic 1960 landslide that occurred between the 5600 clocks of Soledad Mountain Road and Desert View Drove during the construction of the subdivision, as an FYI since you may not remember it ;-)... The house in the photo that perches on the edge of the slide was rehabilitated and currently exists. The remaining homes were destroyed and the subdivision completely regraded to create a bench which is currently the 'even' side of Desert View Drive.²⁷

Hawk followed-up this e-mail and provided more history of the area. Hawk wrote on 24 July 2007 to Boekamp:

In the early 90's, there was a huge litigation where the City paid over 1,000,000 in litigation costs, and we stabilized the road for another 600K with caissons, and replaced the sewer. That failure only involved 5 houses, but was not spectacular as it quit moving once the street was repaired.

The City ended up with one house that we were going to tear down, but which became the "La Jolla Rat House" of the mayoral campaign...²⁸

Alex Ruiz, assistant director of the Water Department, sent an e-mail to Jim Fisher, deputy director of the Water Department, and stated:

Based on Rob's conclusions, I would recommend we go ahead and indicate repairs to the street. The situation sounds very familiar to Marlborough Drive, where our main brake discharge traveled along the sewer trenchline causing that failure of the sewer trench. As I recall, we finally made the street repairs in that situation too...²⁹

Fisher heard that day that pressure under the street caused the crack on Soledad Mountain Road was the result of a "blown service."³⁰ Fisher, however, did not believe

²⁷ 24 July 2007 e-mail from Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department, to Patti Boekamp, director of Engineering and Capital Projects; Hossein Ruhi, deputy director for Engineering and Capital Projects; and Jim Bartell, director of the City's Water Department. (Exhibit 19)

²⁸ 24 July 2007 e-mail from Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department, to Patti Boekamp, director of Engineering and Capital Projects. (Exhibit 20)

²⁹ 24 July 2007 e-mail from Alex Ruiz, assistant director of the Water Department, sent an e-mail to Jim Fisher, deputy director of the Water Department. (Exhibit 21)

³⁰ 24 July 2007 e-mail from Jim Fisher, deputy director of the Water Department, to Lois Bennett, senior drafting aide for the Water Department. Subject: "Main Break." Carbon copied: Stan Medina – construction program manager; and Susan Wynne, associate civil engineer. (Exhibit 21)

that the water main break addressed earlier in the week by Water Department crews caused the street problem because:

A review of records, shows that ... the blown service was approximately 50 feet away from the tear in the street. In addition, Mr. Crab reported that the tear appeared in March 2007. Based on this, our blown service could not have caused the tear in the street.

The tear in the street is located above the sewer main...³¹

Ruiz sent an e-mail back to Fisher arguing that the location of the crack and the timing of the water main break coupled with the report of the “blown service” deserved more attention. Ruiz wrote:

Just seems too close and too coincidental to our blown service. In addition, one could argue that while the tear may have been pre-existing, the blown service likely exacerbated the problem...³²

These communications show that staff was concerned about the exact nature of the problem and disagreed over the cause of the crack in the street.

At this point, more than 10 work orders had been issued for work related to water leaks, street cracks from pressure under the road, and for cleanup crews to restore flooded streets. Residents in the area contacted City officials and notified them of prolonged water leaks, sinking in the road, and the possibility of larger scale soil movement underground. City officials were notified of these leaks, the street repairs and the residents’ concerns, and were provided information that the area had historically experienced soil movements causing extensive property damage. It is worth noting that other than a handful of constituent calls, the majority of the communications were taking place between City officials in the Water Department and the Engineering and Capital Projects Departments.

CITY INVESTIGATION CONTINUES

On 25 July 2007, Patti Boekamp sent an e-mail to Jim Barrett to ensure that Rob Hawk’s recommendations for more geological investigations were pursued. Boekamp wrote:

³¹ 24 July 2007 e-mail from Jim Fisher, deputy director of the Water Department, to Alex Ruiz, assistant director of the Water Department. (Exhibit 21)

³² 24 July 2007 e-mail from Alex Ruiz, assistant director of the Water Department, to Jim Barrett, director of the Water Department, and Jim Fisher, deputy director of the Water Department. (Exhibit 21)

I'm presuming you or Metro will check out the problem deeper – I had Rob go to see if we needed to look at larger scale land movement in that historically problematic area. It seems like he has handled the constituent's questions and concerns for now, but he does recommend more investigative work related to the trench issues.³³

Meanwhile, the City's Metropolitan Wastewater ("Metro Wastewater") crew reported to test the integrity of the sewer pipes on the 5700 block of Soledad Mountain Road. The crew issued a total of 13 work orders on 16 July 2007 to televise the sewer pipes, where a camera is run through the pipe to check for leaks. According to the work orders, the crews assisted in flushing the pipes and found:

- A camera went underwater for 10 feet and that the camera could not pass through portions of the pipe³⁴
- Roots were wrapped around pipe joints³⁵
- The camera was unable to pass certain sections of pipe;³⁶
- A crack in a sewer pipe joint potentially resulted from some underground work done by the Water Department.³⁷

The pipes were referred to be cleaned and "no major problems were found," according to an e-mail sent to a Christopher Toth, deputy director of Metro Wastewater.³⁸ Toth relayed the information to City officials working on the problem. Toth wrote in the e-mail: "[T]he sewer mains in this area are reported to be in good shape and not structurally impacted by soil movement."³⁹

³³ 25 July 2007 e-mail from Patti Boekamp, director of Engineering and Capital Projects, to Jim Barrett, director of the Water Department. (Exhibit 22)

³⁴ SWIM Work order, 26 July 2007, SR# 3000622, Work Order # 3. (Exhibit 23)

³⁵ SWIM Work order, 26 July 2007, SR# 3000622, Work Order # 6. (Exhibit 24)

³⁶ SWIM Work order, 26 July 2007, SR# 3000622, Work Order # 9. (Exhibit 25)

³⁷ SWIM Work order, 26 July 2007, SR# 3000622, Work Order #10. SWIM Work order, 26 July 2007, SR# 3000622, Work Order # 13. (Exhibit 26)

³⁸ 27 July 2007 e-mail from Melody Shaw-Sydnor, to Christopher Toth, deputy director of the Water Department. Subject: "Re: Fwd: 5700 Block of Soledad Mt. Road – Concerns of Citizens." (Exhibit 27)

³⁹ 27 July 2007 e-mail from Christopher Toth, deputy director of the Water Department, to Robert Ferrier, deputy director of the Environmental Services Department; Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department; Hossein Ruhi, deputy director for Engineering and Capital Projects; and Jose Navarro. Subject: "Re: Fwd: 5700 Block of Soledad Mt. Road – Concerns of Citizens." (Exhibit 28)

Meanwhile, City officials continued to plan for geological investigations to be performed at Soledad Mountain Road. Hossein Ruhi, Deputy Director for Engineering and Capital Projects, explained in a 27 July 2007 the work to be completed:

With this email I am asking that our lab do an exploratory coring to see if there is void under the pavement or not. If there is no void then we should prob thru [sic] the hole to see if the soil is loose or not. If it is loose then we need to do an appropriate repair otherwise just overlay the sunken areas.⁴⁰

City officials, at this time, were coordinating an effort to find the source of the problems.

MORE REPORTS OF PROBLEMS

It was not long before the City began receiving more calls about leaks in the street. On 2 August 2007, Mount Soledad resident Tom Crabbe called Hawk to notify him of another water leak in the street.⁴¹

A work order was issued by the City later that day to investigate “WTR LEAKING UP OUT OF PATCH” located on the 5700 block of Soledad Mountain Road. A crew responded to the work order, surveyed the site and commented, “CLAIMS ST HAS STARTED TO LEAK AGAIN[.] CLAIMS WHEN UNIT WENT OUT IT WAS DRY BUT STILL LEAKING”.⁴²

The City received a follow-up e-mail from resident Tom Crabbe on 3 August 2007 to notify the City of this new leak. Crabbe sent an e-mail and a series of photos to Hawk:

I contacted you yesterday concerning the water main break on the 5700 block of Soledad Mtn. Rd in La Jolla. The repair area has been leaking for two days. I alerted the city water yesterday and it still leaks water. In our

⁴⁰ 27 July 2007 e-mail from Hossein Ruhi, deputy director for engineering and capital projects, to Christopher Toth, deputy director of the Water Department; Earl Lokers; Jose Navarro; Mark Daod; Rob Hawk, senior engineering geologist for the City’s Engineering and Capital Projects Department; and Robert Ferrier, deputy director of the Environmental Services Department. Subject: “Re: Fwd: 5700 Block of Soledad Mt. Road – Concerns of Citizens.” (Exhibit 29)

⁴¹ 3 August 2007 e-mail from Tom Crabbe, resident of the 5700 block of Soledad Mountain Road, to Rob Hawk, senior engineering geologist for the City’s Engineering and Capital Projects Department. Carbon copied to: Ralph Adamos, associate civil engineer for Engineering and Capital Projects; Mak Daoud, associate civil engineer for Engineering and Capital Projects; Earl Lokers, senior material engineer for Engineering and Capital Projects; Hossein Ruhi, deputy director for Engineering and Capital Projects; Alex Ruiz, assistant director of the Water Department; and Christopher Toth, deputy director of the Water Department. (Exhibit 30)

⁴² 2 August 2007 Sewer/Water Infrastructure Management – “Work Order Data Entry.” (Exhibit 31)

conversation yesterday you asked for pictures. These two will show you new leaks after the fixed water main. Our main concern is stopping anymore damage to the street, and any damage to surrounding areas.⁴³

Hawk replied to Crabbe at 10:21 a.m. and told him that in the prior conversation Hawk was not notified of the water leak. Hawk wrote:

Mr. Crabbe: Thank you for the photos...I don't recall you mentioning the water leak. I will pass these along to the Water Department along with a 'heads up' about the apparent gas leak, and to our lab.⁴⁴

Another work order was issued by the City on 3 August 2007 at 10:21 a.m., the same time that Hawk replied to Crabbe. The work order requested that a crew report to the 5700 block of Soledad Mountain Road to investigate an additional leak. Again, a crew arrived, this time with a more alarming comment: "RENEWED REPAIR IS LEAKING BADLY/SINKING... NEED TO FIX IT TODAY ..."⁴⁵ The water main was repaired again and street clean-up crews were ordered to report to the scene of the leak.⁴⁶

Three days after the City fixed the leak, Tom Crabbe called Thyme Curtis, a representative for Council member Kevin Faulconer, to complain of another leak on Soledad Mountain Road. Curtis then sent an e-mail to Alex Ruiz, assistant director of the Water Department, that stated:

Tom Crab [sic] just called and said there are new cracks in Soledad Mtn Road, as of today, that seem to indicate a much larger problem and is worried that a major problem needs to be averted.

There are new cracks at 5725 Soledad Mtn. Road, and the ground is sinking. Mr. Crab said that there is a lot of water from the leak, and that crews are working on the leak right now, though the streets are cracking

⁴³ 3 August 2007 e-mail from Tom Crabbe, resident of the 5700 block of Soledad Mountain Road, to Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department. Carbon copied to: Ralph Adamos, associate civil engineer for Engineering and Capital Projects; Mak Daoud, associate civil engineer for Engineering and Capital Projects; Earl Lokers, senior material engineer for Engineering and Capital Projects; Hossein Ruhi, deputy director for Engineering and Capital Projects; Alex Ruiz, assistant director of the Water Department; and Christopher Toth, deputy director of the Water Department. (Exhibit 30)

⁴⁴ 3 August 2007 e-mail from Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department, to Tom Crabbe, resident of the 5700 block of Soledad Mountain Road. Subject: "Re: Street Water Leak/5700 block of Soledad Mtn." (Exhibit 30)

⁴⁵ 3 August 2007 Sewer/Water Infrastructure Management – "Work Order Data Entry." (Exhibit 32)

⁴⁶ See *Id.*

very badly ‘as we speak’ and SDG&E has vented the streets to prevent an explosion, as there is a gas leak. He was very concerned...⁴⁷

Crabbe also included, with the email to Curtis, a series of photographs of what he said were new cracks in the foundation of the house.

Ruiz forwarded the information to City officials at the Water Department. Ruiz sent the e-mail on 6 August 2007 to Jim Fisher, deputy director of the Water Department, and Johnny Mitchell, water system technician for the Water Department: “Jim: Not sure about the situation but it appears as though this is becoming a bigger issue. Can you give me an update regarding repairs?”⁴⁸

Concern about the problem sparked Jim Fisher to visit Soledad Mountain Road to survey the damage. Ruiz circulated an e-mail that detailed Fisher’s visit.

The following is a summary of today’s observations from Jim Fisher, Water Ops Division Deputy Director, who personally visited the Soledad Mt Rd site this morning:

- A water leak reported on Friday was the result of a defective repair saddle. It appears that the adhesive...failed and allowed water to leak out. – the actual amount of water coming from the previous repair/patch was minimal, so the leak was held until today for repairs.
- The cracks in the street do not appear to have changed since Operations Division managers visited the site a couple of weeks ago.
- The report ‘a lot of water’ was the result of the main draining activity associate with the leak repairs and the excavated hole being pumped out. As mentioned before there was minimal leakage coming from the failed saddle itself...
- Johnny Mitchell, Acting Construction Manager spoke to Mr. Crab, who showed Johnny what he thought was additional ground subsidence and a crack on the house at this address (see attached pictures). Neither the subsidence or crack appear to be related to the blown services in mid July, nor the leak on Friday.

In conclusion, it does not appear that anything has changed in the area since the last time we were out there mid July.⁴⁹

⁴⁷ 6 August 2007 e-mail from Thyme Curtis, representative for Council member Kevin Faulconer, to Alex Ruiz, assistant director of the Water Department. (Exhibit 33)

⁴⁸ 6 August 2007 e-mail from Alex Ruiz, assistant director of the Water Department, to Jim Fisher, deputy director of the Water Department; and Johnny Mitchell, water system technician for the Water Department. Subject: “Fwd: Re: Soledad Mtn Road.” (Exhibit 33)

⁴⁹ 6 August 2007 e-mail from Alex Ruiz, assistant director of the Water Department, to Jim Fisher, deputy director of the Water Department; and Johnny Mitchell, water system technician for the Water Department. Subject: “Fwd: Re: Soledad Mtn Road.” (Exhibit 34).

Despite the concerns of Crabbe, Fisher found that there was minimal water leak, no change to the street cracks, and concluded that “nothing had changed...”⁵⁰

Hawk replied to Ruiz’s e-mail and agreed with the conclusions reached by Fisher at the site visit. Hawk wrote:

All: I concur with Jim regarding the cracking. Attached are some photos from 7/24/07 & 8/06/07 with no discernable change. Note that the patch appears intact. However, if we continue to experience leaks in this area, please let me know due to the past history of the road.⁵¹

While concurring that nothing was wrong, Hawk made specific instructions that he be notified if any new leaks occur.

The results of the exploratory boring study were completed on 7 August 2007. Hossein Ruhi, deputy director for Engineering and Capital Projects, sent an e-mail to City officials that worked on the project to explain the results. Ruhi wrote:

We have not found any voids under the pavement. Therefor [sic], I am concluding that this is part of a very slow movement/settlement related to water in the sub-grade and/or trench that has caused and movement and has stopped for now . However, we will keep an eye on it to assure this is the case.⁵²

Ruhi stated that the cracks in the pavement were related to water. This statement is consistent with Hawk’s conclusion in the 24 July 2007 e-mail:

The crack in the street, located approximately 50 feet to the north of the repair patch, appears to be caused by the settlement of the paving section along the utility trench, likely sewer but close to where I guessed the water

⁵⁰ See at *Id.*

⁵¹ 6 August 2006 e-mail from Rob Hawk, senior engineering geologist for the City’s Engineering and Capital Projects Department, to Jim Barrett, director of the Water Department; Curtis Thyme, council representative for Council man Kevin Faulconer; Jim Fisher, deputy director of the Water Department; and Alex Ruiz, assistant director of the Water Department. (Exhibit 35)

⁵² 8 August 2007 e-mail from Hossein Ruhi, deputy director for Engineering and Capital Projects, to Mak Daoud, associate civil engineer for Engineering and Capital Projects. Subject: “Re: Fwd: 5700 Block of Soledad Mt. Road – Concerns of Citizens.” Carbon copied: Christopher Toth, deputy director of the Water Department; Earl Lokers, senior material engineer for Engineering and Capital Projects; Jim Fisher, deputy director of the Water Department; Rob Hawk, senior engineering geologist for the City’s Engineering and Capital Projects Department; and Robert Ferrier, deputy director of the Environmental Services Department. (Exhibit 36)

line to be. It is my understanding that the water main has had a previous major leak along this section, and that water penetrated the sewer trench.⁵³

It would not be long before another water leak was reported.

The City issued a series of three work orders to repair a leaking water main on 10 August 2007. All three work orders – between 4:02 a.m. and 7:09 a.m.⁵⁴ -- described the problem as, “SEEPING THRU CRACK IN STRT.” The language in the work orders became more alarming as time passed. The fourth work order, issued on 10 August 2007 at 8:02 a.m. described the problem as, “SEEPING THRU CRACK IN STRT...ST STARTING TO SHIFT PLS ASAP.”⁵⁵

Rob Hawk was dispatched to the area, surveyed the site, and issued an update to Jim Barrett, Jim Fisher, Hossein Ruhi, and Alex Ruiz, on 10 August 2007. Hawk found no threat to health and wrote:

I visited the site this morning based on several calls from residents. The water service line pulled the corp from the AC main, causing the leak. In addition, another gas line nearby failed last night. Based on my observations, I do not believe that a threatening life or safety condition exists at this time.⁵⁶

Hawk stated there is no immediate health or safety concern; he also requested that any leaks be treated immediately in order to avoid the intensification of the problem. He wrote:

However, the temporal pattern of events and some of the distress features to improvements indicate that we need to be concerned about adding water to the subsurface of the area. I recommend any reported water leaks on

⁵³ 24 July 2007 e-mail from Rob Hawk, senior engineering geologist for the City’s Engineering and Capital Projects Department, to Patti Boekamp, director of Engineering and Capital Projects; Hossein Ruhi, deputy director for Engineering and Capital Projects; and Jim Bartell, director of the City’s Water Department. (Exhibit 19)

⁵⁴ 10 August 2007, 4:02 a.m.; Sewer/Water Infrastructure Management – “Work Order Data Entry.” 10 August 2007, 4:50 a.m.; Sewer/Water Infrastructure Management – “Work Order Data Entry.” 10 August 2007, 7:09 a.m.; Sewer/Water Infrastructure Management – “Work Order Data Entry.” (Exhibit 37)

⁵⁵ 10 August 2007, 8:02 a.m.; Sewer/Water Infrastructure Management – “Work Order Data Entry.” (Exhibit 38)

⁵⁶ 10 August 2007 e-mail from Rob Hawk, senior engineering geologist for the City’s Engineering and Capital Projects Department, to Jim Barrett, director of the Water Department; Jim Fisher, deputy director of the Water Department; Hossein Ruhi, deputy director for Engineering and Capital Projects; and Alex Ruiz, assistant director of the Water Department. (Exhibit 39)

Soledad Mountain Road or Desert View Drive receive high priority for repair.⁵⁷

Jim Fisher immediately acknowledged Hawk's request in an e-mail response:

All, We have already given the direction to our field crew that any reported water leaks in the vicinity of 5700 block of Soledad Mtn road, need to be addressed immediately.⁵⁸

These e-mails illustrate that all high-ranking City officials were now educated enough about the risk of water damage on Soledad Mountain Road and Desert View Drive to know that any leak had to be repaired immediately. However, no warning to the residents about any danger was issued to this point.

While these issues were being discussed by City officials, another work order was issued to fix another water leak on the 5700 block of Soledad Mountain Road that was "SEEPING THRU CRACK IN STRT," according to the order which was filed at 3:30 p.m.⁵⁹

Shortly after the work order was issued, Jim Barrett, director of the Water Department, sent an e-mail to work crews that required that work on leaks be fixed immediately. Barrett wrote:

Rich/Dave – FYI...soil and slope stability problems within the La Jolla hills continue to challenge our system integrity.⁶⁰

Another work order was issued for City crews to report back to the 5700 block of Soledad Mountain Road on 13 August 2007. The work order described the problem as "SEEPING THRU CRACK IN STREET."⁶¹

⁵⁷ See at *Id.*

⁵⁸ 10 August 2007 e-mail from Jim Fisher, deputy director of the Water Department, to Alex Ruiz, assistant director of the Water Department; Jim Barrett, director of the Water Department; Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department; and Hossein Ruhi, deputy director for Engineering and Capital Projects. (Exhibit 40)

⁵⁹ 10 August 2007, 3:24 p.m.; Sewer/Water Infrastructure Management – "Work Order Data Entry." (Exhibit 41)

⁶⁰ 10 August 2007 e-mail from Jim Barrett, director of the Water Department, to Richard Haas, deputy chief operating officer for Public Works; and David Jarrell, assistant deputy chief of Public Works. Subject: "Re: Water leak on Soledad mt.rd." (Exhibit 42)

⁶¹ 13 August 2007, 7:51 p.m.; Sewer/Water Infrastructure Management – "Work Order Data Entry." (Exhibit 43)

THE CITY COMMISSIONS MORE STUDIES

City officials decided to seek more testing in the area. Stan Medina, construction program manager for the Water Department, sent out a directive on 13 August 2007 for City experts to investigate for any leaks in the pipe on that block. Medina wrote:

Jim,
FYI: Due to the last three incidents on the 5700 block of Soledad Mt. Road. I've asked Mike Basom to have the entire 5700 block tested for leaks. He stated he could start as soon as tomorrow.⁶²

Meanwhile, after seeing cracks to the foundation of their home, one resident on Soledad Mountain Road consulted a private geotechnical engineer Martin R. Owen to complete a study on what was causing the problems. Owen completed the report on 14 August 2007. Owen found:

- Minor wall cracking was observed in the northwest corner of the (northerly) front bedroom...
- the west side of the brick chimney has separated from the adjacent stucco....
- There is a large, horizontal stucco crack at the base of the exterior wall on the north side of the garage, extending roughly the length of the garage...
- The garage slab has separated horizontally front the west garage footing....⁶³

Owen concluded in the report that the house was constructed on a type of soil called Ardath Shale. This particular soil, Martin wrote, "is a relatively weak, claystone formation, susceptible to land sliding. There have been previous landslides within the Ardath Shale on the steep slopes in the site vicinity."⁶⁴ Martin took notice of the water leaks in the street and included a section in the report on this potential issue. He wrote:

At the time of my inspection, the City of San Diego was repairing water pipe ruptures in Soledad Mountain Road, adjacent to and south of the lot. Three water pipe leaks were reported to have occurred in close

⁶² 13 August 2007 e-mail from Stan Medina, construction program manager for the Water Department, to Jim Barrett, director of the Water Department. (Exhibit 44)

⁶³ 14 August 2007 letter from Martin R. Owen, geotechnical engineer, to Brian Bruke, resident of Soledad Mountain Road; Subject: "Geotechnical Inspection of Residence." (Exhibit 45)

⁶⁴ See at *Id.*

succession....At this time, it is not clear if there is a connection between the water pipe ruptures and building damage.⁶⁵

In the report Martin concluded that there were “two types of soil movement” that resulted in sinking of certain portions of the home. Martin concluded:

4. Both fill settlement and expansive soils movement are activated by infiltration of surface water. Rainfall and landscape irrigation are the most likely source. In this case, poor surface drainage and water ponding near the front of the garage appear to have resulted in increased water infiltration beneath the garage foundations.

5. Leaking water and/or sewer pipes can also provide another water source. It is not yet clear if there is a connection between the water pipe ruptures in the street and the garage/driveway damage.

6. There are no indications (at this time) of deep seated landsliding. However, in view of the history of landslide problems in the area, and the recent water pipe ruptures, further monitoring is advisable.⁶⁶

Martin also recommended that the homeowner not repair the foundations and cracks for a period of six months, to see if the house continued to move.

The next day, on 15 August 2007, another resident of Soledad Mountain Road sent an e-mail to Rob Hawk that expressed concern over the structural integrity of the hill. The residents, Yolanda and Don Braunagel, wrote:

Dear Mr. Hawk,

I know that you have been concerned about what is happening on our street....We are very concerned as well, because we are next door to the garage that appears to have serious structural damage. We have noticed some very recent changes and problems which I will list. I will also attach pictures to illustrate our concerns.

Cracks in our outside stucco wall on the same side as the neighbor's damaged garage.

Cracks in the cement pathway next to that wall.

A cracked planter on that same side.

⁶⁵ See at *Id.*

⁶⁶ See at *Id.*

Movement of bricks on a brick pathway on that same side as well as in front of our house.

Separation of the front sidewalk from our tiled entry and separation of the sidewalk from our driveway.

Separation of our garage wall from the driveway.

Separation of a tiled walkway from the front wall of the house.

There are other cracks and such, and all this has been recent....On August 3, before going out of town I called in to let the city know that there was a problem with water coming up and puddling on our street. Next [sic] day I called again to ask why no one had come because the water was oozing out again and causing another puddle.⁶⁷

Braunagel also provided a series of pictures with the e-mail to provide a visual representation of the described damage to the home.

Later that day, 15 August 2007, the executive leadership of the City's Water and Capital Improvement Departments held a meeting between 11:30 a.m. and 12 p.m. to discuss "Water Leakage – Urgent," according to a calendar entry.⁶⁸ Attendees of the meeting included Afshin Oskoui, deputy director of Engineering and Capital Projects; Alex Ruiz, assistant director of the Water Department; Hossein Ruhi, deputy director for Engineering and Capital Projects; Jim Barrett, director of the Water Department; Jim Fisher, deputy director of the Water Department; Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department; and Thomas Zeleny, deputy city attorney. This meeting was the first where a representative of the City Attorney's Office was present.

Following this meeting, Jim Fisher forwarded a series of e-mails (disclosed earlier in this report) to Deputy City Attorney Ray Palmucci to educate him on the status of the hillside, the resident complaints received to date, and the proposed work plans.

⁶⁷ 15 August 2007 e-mail from Yolanda and Don Braunagel, residents of Soledad Mountain Road, to Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department. Subject: "5735 Soledad Mtn. Rd. concerns." (Exhibit 46)

⁶⁸ 15 August 2007 calendar entry for meeting that included Afshin Oskoui, deputy director of Engineering and Capital Projects; Alex Ruiz, assistant director of the Water Department; Hossein Ruhi, deputy director for Engineering and Capital Projects; Jim Barrett, director of the Water Department; Jim Fisher, deputy director of the Water Department; Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department; and Thomas Zeleny, deputy city attorney. (Exhibit 47)

On 16 August 2007, the water main leak investigation that was requested by Stan Medina was completed and the results were completed. Medina received an e-mail from Michael Basom, water systems technician supervisor, that stated:

The leak detection units went to Soledad Mtn Rd and found no leaks on the services that they sounded. They checked the services on Soledad Mtn between Palomino Cr and Desert View Dr.⁶⁹

Medina immediately forwarded the e-mail to Barrett and Fisher and stated, “FYI, Good News. No leaks at this time.”⁷⁰

Things remained quiet on Soledad Mountain Road and Desert View Drive for a couple of weeks. In the meantime, Hawk responded on 28 August 2007 to the distressed e-mail from Yolanda and Don Braunagel. Hawk wrote:

Thank you Yolanda. The water department has increased priority for Soledad Mtn. Road water leaks. As we discussed on the 15th when I was on-site, the area was developed in the late 1950’s-early 1960’s using grading techniques common for the day, but not employed today. It is not uncommon to have post construction soil movement, and older records suggest some of the houses in the area may be on fill soil.⁷¹

Hawk’s e-mail seeks to comfort Yolanda and Don Braunagel by alerting them to the fact that the water leaks are now a top priority.

While the final weeks of August wound down without any news of new water leaks on Soledad Mountain Road, it would not remain quiet for very much longer.

A HOPE FOR “RETURN TO EQUILIBRIUM”

It was not long before more work orders were sent out to City work crews to check for leaks on Mount Soledad. On 31 August 2007, a work order was issued for a possible leak on the 5700 block of Desert View Drive. Upon surveying the situation, the crew that reported to the site wrote: “STREET IS UNEVEN – SOME BUCKLING AND

⁶⁹ 16 August 2007 e-mail from Michael Basom, water systems technician supervisor for the Water Department, to Stan Medina, construction program manager for the Water Department. Subject: “Soledad Mtn Rd.” (Exhibit 48)

⁷⁰ 16 August 2007 e-mail from Stan Medina, construction program manager for the Water, to Jim Barrett, director of the Water Department, and Jim Fisher, deputy director of the Water Department. Subject: “Fwd: Soledad Mtn Rd.” (Exhibit 48)

⁷¹ 28 August 2007 e-mail from Rob Hawk, senior engineering geologist for the City’s Engineering and Capital Projects Department, to Yolanda and Don Braunagel, residents of Soledad Mountain Road. (Exhibit 49)

POT HOLES ALL OVER THE STREET, POSSIBLE LEAK BENEATH THE STREET...YG.”⁷²

Another work order was issued by the City on 4 September 2007 at 7:50 a.m. for another leak on Desert View Drive.⁷³

That same morning, on 4 September 2007, Rob Hawk sent an e-mail to the Field Division of the City’s General Services Department to alert them that a 4.0 magnitude earthquake had taken place 8.5 miles southwest of La Jolla at 7:47 a.m.⁷⁴ There was no study in the documents released by the Mayor’s Office that analyzed whether this earthquake contributed to soil movement problems in later weeks.

A City crew did not respond to the 4 September 2007 work order until 5 September 2007. When the crew arrived they were “UNABLE TO LOCATE LEAK,” according to the work slip.⁷⁵ The crew eventually found the leak, repaired it and placed a patch on the street.

On 9 September 2007, Yolanda Braunagel, resident of Soledad Mountain Road, wrote an e-mail to Rob Hawk to notify him that the street was sinking again. Braunagel stated:

Mr. Hawk,
My husband and I spoke to you briefly when you were here a few days ago. You said we could keep you informed on how our street is doing. We, and many of our neighbors, continue to be very concerned because the ‘patch’ in the road appears to be sinking in. And also because at the time of the sewer rupture we had a terrible sewage smell in our bathroom. We had a couple of plumbers check it out but they found nothing wrong with the installation. As soon as the sewer was repaired the smell disappeared but now it is here again and we fear it may [sic] another sewer break.⁷⁶

⁷² 31 August 2007, 12:50; Sewer/Water Infrastructure Management – “Work Order Data Entry.” (Exhibit 50)

⁷³ 4 September 2007, 12:50; Sewer/Water Infrastructure Management – “Work Order Data Entry.” (Exhibit 52)

⁷⁴ 4 September 2007 e-mail from Rob Hawk, senior engineering geologist for the City’s Engineering and Capital Projects Department, to Field Division. Subject: “Earthquake”. Carbon copied: Patti Boekamp, director of Engineering and Capital Project; Afshin Oskoui, deputy director of Engineering and Capital Projects; and Dave Zoumaras, deputy director of Engineering and Capital Projects. (Exhibit 51)

⁷⁵ See at *Id.*

⁷⁶ 9 September 2007, 1:57 p.m., e-mail from Yolanda Braunagel, resident of Soledad Mountain Road, to Rob Hawk, senior engineering geologist for the City’s Engineering and Capital Projects Department. Subject: “Soledad Mountain Rd. La Jolla.” (Exhibit 53)

Hawk sent the e-mail to his superiors in the General Services, Water, and Metro Wastewater Departments to notify them that the problems on Soledad Mountain Road may be more than just water main breaks.⁷⁷ Christopher Toth, deputy director of Metro Wastewater, said that the department would look into it⁷⁸ and later reported that the sewer leak was not the City's problem. Toth, in a 10 September 2007 e-mail, wrote:

Our MWWD staff investigated this matter this morning (9/10) and determined that the bad sewer odor is coming from the residence's internal plumbing system. The city sewer mains in this area are clear and running free.⁷⁹

Toth followed up with a second e-mail to Jim Fisher, deputy director of the Water Department, to provide a more thorough explanation of the work by MWWD crews on Soledad Mountain Road:

Review of this recent CCTV file shows that the sewer lateral leading from the property is completely filled with roots as it approaches the sewer main.

The property owner needs to be contacted and appraised of this matter. Following our Council Policy 400-10, the property owner needs to clear the property sewer lateral so that it flows freely... The property owner is responsible for cleaning the sewer lateral completely, regardless of which side of the street lateral blockage exists.

The large root mass within the sewer lateral is the likely cause of bad sewer odors within the residence, since sewage cannot easily flow from the property to the city sewer main.⁸⁰

⁷⁷ 10 September 2007, 8:40 a.m., e-mail from Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department, to Jim Fisher, deputy director of the Water Department. 10 September 2007, 6:34 a.m., e-mail from Hossein Ruhi, deputy director of Engineering and Capital Projects, to Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department; Subject: "Fwd: Soledad Mountain Rd. La Jolla". 10 September 2007, 8:45 a.m., e-mail from Jim Fisher, deputy director of the Water Department, to Christopher Toth, deputy director of the Water Department. (Exhibit 54)

⁷⁸ 10 September 2007, 8:48 a.m., e-mail from Christopher Toth, deputy director of the Water Department, to Jim Fisher, deputy director of the Water Department. Subject: "Re; Fwd: 5735 Soledad Mtn. Rd. concerns/Attorney-Client communication." (Exhibit 55)

⁷⁹ 10 September 2007, 1:36 p.m., e-mail from Christopher Toth, deputy director of the Water Department, to Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department; and Afshin Oskoui, deputy director of Engineering and Capital Projects. Subject: "RE: 5735 Soledad Mtn. Rd. concerns/Attorney-Client communication." Carbon copied: Jim Barrett, director of the Water Department; Tim Bertch, director of Metro Wastewater; Jim Fisher, deputy director of the Water Department; Darren Greenhalgh; David Jarrell, assistant deputy chief of Public Works; and Hossein Ruhi, deputy director of Engineering and Capital Projects. (Exhibit 56)

⁸⁰ 10 September 2007, 2:55 p.m., e-mail from Christopher Toth, deputy director of the Water Department, to Jim Fisher, deputy director of the Water Department. (Exhibit 57)

Fisher was particularly concerned that any additional sewer leaks in the area may contribute to additional soil movement underground. Fisher outlined these concerns in an e-mail to Toth and Hawk:

Rob, This raises a question about any sewage leakage into the slope and potentially contributing to the slope movement and/or negative impacts on the water system.⁸¹

Fisher then forwarded Toth's e-mail to Stan Medina, construction program manager for the Water Department. Fisher asked Medina if the City should be concerned about sewer leaks adding to soil movement. Fisher wrote:

Stan, Look to see where this is relative to the problems we have been having. If there is potential sewage leakage into the soil we may need to take additional precautionary efforts in the repair of any leaks.⁸²

Meanwhile, Hawk responded to Fisher's request with an e-mail that revealed his analysis of the potential dangers of soil movement that had occurred. Hawk, in a 10 September 2007 e-mail to Fisher, wrote: "I hope all of this is readjustment and that an equilibrium condition will return to the slope."⁸³ Hawk stated that the soil had been moving, but that it was still considered a readjustment and would return to a condition of equilibrium, or a condition of safety without further soil movements. However, with the statement, Hawk illustrated knowledge that the soil movement might not be simply a readjustment and that the slope will not return to a condition of equilibrium – meaning that conditions might become worse.

CONTINUED PROBLEMS ON SOLEDAD MOUNTAIN ROAD

Hawk's hope would not be realized, as another water leak was reported on Soledad Mountain Road on 14 September 2007. A work order was issued by the City at

⁸¹ 10 September 2007, 3:12 p.m., e-mail from Jim Fisher, deputy director of the Water Department, to Christopher Toth, deputy director of the Water Department; and Christopher Toth, deputy director of the Water Department. Subject: "Re: 5735 Soledad Mtn Rd." Carbon copied: Alex Ruiz, assistant director of the Water Department; David Jarrell, assistant deputy chief of Public Works; Jim Barrett, director of the Water Department; Ray Palmucci, deputy city attorney; Stan Medina, construction program manager for the Water Department; and Tim Bertch, director of Metro Wastewater. (Exhibit 57)

⁸² 10 September 2007, 3:14 p.m., e-mail from Jim Fisher, deputy director of the Water Department, to Stan Medina, construction program manager for the Water Department. Subject: "Fwd: 5735 Soledad Mtn Rd." (Exhibit 58)

⁸³ 10 September 2007, 4:09 p.m., e-mail from Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department, to Jim Fisher, deputy director of the Water Department. Subject: "Re: 5735 Soledad Mtn Rd." (Exhibit 59)

1:33 p.m. which alerted City crews that responded to the scene, “LOTS OF WTR COMING UP OUT OF ST”. The crew that responded to the scene issued an extremely alarming comment: “PER CONS AFRAID COULD CAUSE A HILLSLIDE PLS ASAP.”⁸⁴

Hawk was notified of the leak and immediately sent an e-mail to City officials to alert them of the situation:

We have a new leak on the 5700 block according to Mr. Crabbe (5703). I spoke with Johnny Mitchell and he said he would attend to it. I’m heading up there now to see if anything is going on.⁸⁵

Hossein Ruhi, deputy director for Engineering and Capital Projects, recognized the importance of the situation and sent an e-mail to all City officials who had been involved to that point:

I have left a phone message for John Mitchell that is urgent to fix this water leak as soon as possible it cannot wait until tomorrow as Rob informed me that the crack on the street is growing wider. Jim fisher is out of the office, any body from water department receiving this e-mail PLS help and get a crew there to fix the leak. I have asked Rob to keep an eye on the situation over the weekend.⁸⁶

The leak was identified and repaired.

Ruiz, who was also on the e-mail chain, reacted immediately and instructed Hawk to schedule a meeting early the following week with all City officials involved in the project to assess the situation, “to see what progress has been made, and what next steps we may need to follow.”⁸⁷

⁸⁴ 14 September 2007, 1:31 p.m.; Sewer/Water Infrastructure Management – “Work Order Data Entry”. (Exhibit 60)

⁸⁵ 14 September 2007 e-mail from Rob Hawk, senior engineering geologist for the City’s Engineering and Capital Projects Department, to Alex Ruiz, assistant director of the Water Department; Jim Barrett, director of the Water Department; Hossein Ruhi, deputy director for Engineering and Capital Projects; Jim Fisher, deputy director of the Water Department; and Ray Palmucci, deputy city attorney. (Exhibit 61)

⁸⁶ 14 September 2007 e-mail from Hossein Ruhi, deputy director for Engineering and Capital Projects, to Rob Hawk, senior engineering geologist for the City’s Engineering and Capital Projects Department; Alex Ruiz, assistant director of the Water Department; Jim Barrett, director of the Water Department; Jim Fisher, deputy director of the Water Department; and Ray Palmucci, deputy city attorney. (Exhibit 62)

⁸⁷ 14 September 2007 e-mail from Alex Ruiz, assistant director of the Water Department, to Rob Hawk, senior engineering geologist for the City’s Engineering and Capital Projects Department. (Exhibit 61)

CITY MOVES FOR MORE STUDIES

On the morning of 17 September 2007, Rob Hawk sent an e-mail to James Nabong, assistant civil engineer, which included a draft scope of work for the City to hire a geotechnical company to study the soil issues – including the underground movement of soil – on Soledad Mountain Road

Also that day, a meeting was held between officials of the Water Department, General Services Department, and a deputy city attorney to discuss “possible action plans to protect public and private improvements.” The meeting notification e-mail stated:

Recent observations suggest additional distress to improvements. I understand that Water has a crew that will repair the water line tonight, and I will visit the site over the weekend...I’ve invited Chris Toth from Sewer also in case he wants to attend, although recent filming of the main did not reveal any damage.⁸⁸

The meeting was held from 10 a.m. to 10:30 a.m. on 17 September 2007. No notes regarding the meeting were included in the documents released by the Mayor’s Office.

Shortly after the meeting, e-mails circulated that sought input on a letter that was going to be sent to residents of Soledad Mountain Road, Desert View Drive, and additional areas that could be impacted. The letter sought to outline the City’s plan to shut down the water main and highline the pipe, or locate the pipe above the ground near the street curb. Jim Fisher explained the process in a 17 September 2007 e-mail:

We have reviewed the water system for the Soledad Mtn Rd area and will be able to remove the main from service. Our plan is to perform two cut & plugs to physically separate the main in the impacted area and highline approximately 10 homes....Attached is some language that can be included to homeowners. We will be ready to perform the work next week, once the letter goes out. Please let me know when the letter is sent so that we can schedule the work.⁸⁹

Fisher’s e-mail included the original draft of the letter, which stated:

⁸⁸ 17 September 2007 meeting notification from Rob Hawk, senior engineering geologist for the City’s Engineering and Capital Projects Department, to Jim Barrett, director of the Water Department; Jim Fisher, deputy director of the Water Department; Afshin Oskoui, deputy director of Engineering and Capital Projects; Ray Palmucci, deputy city attorney; and Alex Ruiz, assistant director of the Water Department. Subject: “Soledad Mtn Road.” (Exhibit 63)

⁸⁹ 17 September 2007 e-mail from Jim Fisher, deputy director of the Water Department, to Afshin Oskoui, deputy director of Engineering and Capital Projects. Carbon copied: Dave Zoumaras, deputy director of Engineering and Capital Projects; Hossein Ruhi, deputy director for Engineering and Capital Projects; and mjgibson@sandiego.gov. (Exhibit 64)

The purpose of this effort is to minimize potential damage to the water main and roadway due to potential soil movement in the 5700 block of Soledad Mountain Road. Past soil movement in the general area in the 1960's and the 1990's resulted in damage to local underground water pipelines. Until the cause of the leaks has been identified and corrected, the City will utilize the highline to provide reliable water service for your property and other properties that depend upon the subject main.⁹⁰

These records indicate that a plan was now in place to address the leaking mains by removing the pipes and placing them on the street level. The records also indicate that the City was prepared to notify the residents that there had been soil movement underground.

Senior Civil Engineer Jamal Batta was put in charge of overseeing the work. Upon being given the assignment, Batta contacted Greg Bych, director of the City's Risk Management Department, to secure a funding source to pay for the geotechnical study. Bych told Batta that there is no funding from Risk Management.

Jamal,
Right now it's strictly a funding issue – there are no claims and no clear city liability yet. However, I have alerted our Claims Manager Yee, and our Supervising Analyst, Joseph Walker. You can start by contacting Peter to provide him whatever info you have. Thx.⁹¹

This response left Batta searching for an alternate funding source.

Meanwhile, another leak on the 5700 block of Desert View Drive was reported to the City on 18 September 2007. The work order provided a brief description of the problem: "STREET LEAK – SEEPING AND BUCKLING UP."⁹²

DECISION MADE NOT TO INFORM CITY COUNCIL OF EMERGENCY

Batta contacted Afshin Oskoui, deputy director of Engineering and Capital Projects, to help find a funding source. On 18 September 2007, Oskoui sent an e-mail to Tammy Rimes, deputy director of the Purchasing Department, that sought help

⁹⁰ See *at Id.*

⁹¹ 17 September 2007, 6:15 p.m., e-mail from Greg Bych, director of Risk Management, to Jamal Batta, senior civil engineer. Subject: "Re: Soledad Mtn. Road." Carbon copied: jwalker@sandiego.gov; Peter Yee, liability claims supervisor for the City's Risk Management Department. (Exhibit 65)

⁹² 18 September 2007, 11:54 a.m.; Sewer/Water Infrastructure Management – "Work Order Data Entry." (Exhibit 66)

identifying funds to hire a contractor. In the e-mail Oskoui detailed the problems facing Mount Soledad residents and the need to fund the study:

Tammy,

Just a heads up that we'll need your help to approve and process a sole source consultant agreement for a Geotechnical Consultant services for the Soledad Mountain road [sic]. The road and associate underlaying [sic] soil is showing signs of distress and possible movement, and we want to investigate it immediately as a health and safety issue... We'll follow up w/ the necessary paper work as soon as we've identified the consultant who will perform the work.⁹³

In response to Oskoui's e-mail, Deputy City Attorney Peter Mesich responded and set the parameters that must be followed in securing funding for a sole source contract. One of the parameters identified for the funding: a vote of the San Diego City Council in open session or notification to the City Council of the emergency action. Mesich wrote:

Jamal,

Even if you sole-source this contract based on an emergency, the Municipal Code still requires the emergency still requires the following:

§22.3212 Contracts Not Required to be Competitively Bid

(c) A contract to remedy an emergency that affects public health or safety, provided that:

(1) The Purchasing Agent immediately reports the emergency award and its justifications to the City Council; and

(2) The Council by resolution acknowledges and ratifies the procurement;

Let me know if I can be of any assistance.

Peter⁹⁴

Batta responded and stated that he would check the accuracy of Mesich's advice with another attorney from the City Attorney's Office.⁹⁵ Mesich responded to Batta and reiterated the necessity to bring the item to the City Council:

⁹³ 18 September 2007 e-mail from Afshin Oskoui, deputy director of Engineering and Capital Projects, to Tammy Rimes, deputy director of the Purchasing Department. Carbon Copied: Dave Zoumaras, deputy director of Engineering and Capital Projects; David Jarrell, assistant deputy chief of Public Works; Hossein Ruhi, deputy director of Engineering and Capital Projects; Marnell Gibson, deputy director of Engineering and Capital Projects; and Richard Haas, deputy chief operating officer for Public Works. (Exhibit 67)

⁹⁴ 18 September 2007 e-mail from Peter Mesich, deputy city attorney, to Jamal Batta, senior civil engineer. (Exhibit 68)

⁹⁵ 18 September 2007 e-mail from Jamal Batta, senior civil engineer, to Peter Meisch, deputy city attorney. (Exhibit 68)

Jamal-

The designation of an emergency is not being questioned. The issue, or my part of it as your advising attorney, is that we follow the Code. Clearly, the Purchasing Agent will have to go before Council and report the emergency award and justification. The Code Section does not say when, so the emergency should be handled first. But it must be done at some point.⁹⁶

This was direct notification that the City Council must be notified of the problem. Oskoui responded to the e-mail and notified Mesich that the City Council would not be notified and no emergency would be declared. Rather, Oskoui wrote, the contract would be issued and paid for under the Mayor's discretion. Oskoui wrote:

Peter/Michael

We are not declaring an emergency at this point. However, given the circumstances we are moving rather quickly to sole source a professional geotechnical engineering agreement based on the consultant's familiarity w/ land slide issues in this area, and other work performed in the vicinity, and the urgent need to mitigate this issue in becoming an emergency. Additionally, we are estimating the agreement to be below \$250K, and under the Mayor's authority to execute.⁹⁷

This e-mail string between Batta, Oskoui, and Mesich was forwarded to the following executive level City officials notifying them all of the emergency and the disregard of the City Attorney's advice : Dave Zoumaras, deputy director of Engineering and Capital Projects; David Jarrell, assistant deputy chief of Public Works; Jaymie Bradford, director of council affairs for the Office of Mayor Jerry Sanders; Mark Mercer, deputy city attorney; Michael Calabrese, chief deputy city attorney; Ray Palmucci, deputy city attorney; Richard Haas, deputy chief operating officer for Public Works; Tammy Rimes, deputy director of the Purchasing Department; and Thomas Zeleny, chief deputy city attorney.

WORK PLAN FOR MOUNT SOLEDAD CONTINUES TO EVOLVE

Meanwhile, City officials worked to draft concurrent contracts to repair the problem – not just identify what it was. Jamal Batta, senior civil engineer, sent an e-mail on 18 September 2007 to Ron Dodds, a coordinator for Engineering and Capital Projects,

⁹⁶ 18 September 2007 e-mail from Peter Mesich, deputy city attorney, to Jamal Batta, senior civil engineer. (Exhibit 68)

⁹⁷ 18 September 2007 e-mail from Afshin Oskoui, deputy director of Engineering and Capital Projects "Re: Fwd: Urgent Help needed – Sole Source Consultant Agreement." (Exhibit 69)

outlining the expansion of the study to include the installation of stabilization beams to hold the hillside.

Hi Ron,

We are in the process of hiring a consultant [to] design a stability system for the subject road. We informed the consultant that City forces will provide the survey....This is a rush project and any help to expedite the process would be greatly appreciated.⁹⁸

The project was viewed as a “rush project” to install stabilization.

The effort to manage the problem was now in high gear. The plan to highline the water lines was organized and prepared to launch on 18 September 2007, as evidenced by an e-mail from Batta to Stan Medina, construction program manager for the Water Department.⁹⁹ The letter that was being prepared to send to residents was also ready for final review by the City Attorney’s office. A public relations campaign was also created “in anticipation of the calls which may come in” from residents of Soledad Mountain Road and Desert View Drive.¹⁰⁰

Meanwhile, news of the most recent broken water main and street problem was reported to high-level officials at the City, including the Water Department’s Public Relations Specialist, Carol Drummond. An e-mail was sent from James Nagelvoort, deputy director for Engineering and Capital Projects, to Drummond, which stated:

Carol,

FYI, I received a phone call from a resident that lives in the area that was very concerned. She was complaining about a broken water service, earth movement, and cracking in the road. She did not leave a name but her number is (858) 454-8945. I was going to call her back but thought the better of it. Can you please call her as soon as you get the ‘message’ down as what we are going to say to the public.

⁹⁸ 18 September 2007 e-mail from Jamal Batta, senior civil engineer, to Ron Dodds, coordinator for the Engineering and Capital Projects Department. Subject: “Fwd: Soledad Mountain Road (SMR) – Survey.” Carbon copied: Michael Handal, associate engineer for Engineering and Capital Projects; and Rob Hawk, senior engineering geologist for the City’s Engineering and Capital Projects Department. (Exhibit 70)

⁹⁹ 18 September 2007 e-mail from Jamal Batta, senior civil engineer for Engineering and Capital Projects, to Stan Medina, construction program manager for the Water Department. Subject: “Soledad Mountain Road.” Carbon copied: Afshin Oskoui, deputy director of Engineering and Capital Projects; and Dave Zoumaras, deputy director of Engineering and Capital Projects. (Exhibit 71)

¹⁰⁰ 18 September 2007 e-mail from Afshin Oskoui, deputy director of Engineering and Capital Projects, to Rob Hawk, senior engineering geologist for the City’s Engineering and Capital Projects Department. (Exhibit 72)

Thanks, James¹⁰¹

The letter, earmarked to be sent to the residents of Soledad Mountain Road and Desert View Drive regarding the high lining of the water main, had for the first time reached the City Attorney's Office.¹⁰² Mark Mercer, a deputy city attorney who had not been involved in much of the history of the Mount Soledad issue, looked at the draft. Mercer stated:

Rob: See my comments to your letter. My only question is whether the sentence regarding the history of soil movements in the area is necessary. Everything else looks fine.¹⁰³

Hawk agreed that the sentence should be removed and it was taken out.¹⁰⁴ Prior to Mercer's advice, the letter stated:

The purpose of this effort is to minimize potential for damage to the water main and roadway due to potential soil movement in the 5700 block of Soledad Mountain Road. Past soil movement in the general area in the 1960's and the 1990's resulted in damage to local underground water pipelines. Until the cause of the leaks has been identified and corrected, the City will utilize the highline to provide reliable water service for your property, and other properties that depend upon the subject water main.¹⁰⁵

¹⁰¹ 18 September 2007 e-mail from James Nagelvoort, deputy director for Engineering and Capital Projects, to Carol Drummond – Sr. Public Information and Media Relations Officer. Subject: "Desert View Issue." Carbon copied: Dave Zoumaras, deputy director of Engineering and Capital Projects; and Jamal Batta, senior civil engineer for Engineering and Capital Projects. (Exhibit 73)

¹⁰² It is important to note that the documents that include attorney-client correspondence between City departments and the City Attorney's Office were released by the Office of the Mayor on 10 October 2007. The press release issued by Mayor Jerry Sanders stated: "In furtherance of the principles of transparency and equal access to public information, Mayor Jerry Sanders today will release a portion of the public documents related to the Mount Soledad landslide on Wednesday, October 3rd. The documents being released cover July 18, 2007 through the present...While not complete, the documents provide a snap-shot of how the City responded to the concerns of homeowners about soil movement and utility separation in the area. Additional documents, within and outside the time frame noted above, will be released in the coming weeks...The documents will form part of the investigation that the Mayor has launched into the possible causes for the landslide. The investigation will also detail the City's reaction to events that preceded the slide, many perhaps unrelated. The Mayor has consistently asked everyone to maintain an open mind and not reach premature judgments or conclusions." The City Attorney's Office, therefore, bears no responsibility for the public release of these documents. (Exhibit 74)

¹⁰³ 18 September 2007 e-mail from Mark Mercer, deputy city attorney, to Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department. (Exhibit 75)

¹⁰⁴ 18 September 2007 e-mail from Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department, to Mark Mercer, deputy city attorney. (Exhibit 75)

¹⁰⁵ 18 September 2007 e-mail from Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department, to Mark Mercer, deputy city attorney. Subject: "Re: Fwd:

Following Mercer's advice, the letter stated:

The purpose of this effort is to minimize potential for damage to the water main and roadway due to potential soil movement in the 5700 block of Soledad Mountain road. Until the cause of the leaks has been identified and corrected, the City will utilize the highline to provide reliable water service for your property, and other properties that depend upon the subject water main.¹⁰⁶

While discussions about the letter were taking place, City officials worked to slow traffic on Soledad Mountain Road because of concerns that the vibrations may spark additional problems. Batta sent an e-mail on 18 September 2007 to Julio Fuentes, senior traffic engineer for Engineering and Capital Projects:

Julio...We are in the process of hiring a consultant to evaluate the conditions of the subject road. In the meantime, we would like to minimize vibration of moving traffic so it doesn't impact the wet utilities underneath the road. Accordingly, can we put a few signs to say minimize speed or something to that effect. Please let me know.¹⁰⁷

Meanwhile, the City's Purchasing Department provided assurance that the monies needed to start the consultants' work on the geotechnical study would be provided quickly.¹⁰⁸

Soledad Mt. Rd. Water Line." Carbon copied: Jamal Batta, senior civil engineer for Engineering and Capital Projects; and Jim Fisher, deputy director of the Water Department. (Exhibit 75)

¹⁰⁶ 19 September 2007 letter from Hossein Ruhi, deputy director of Engineering and Capital Projects, to Soledad Mountain Road Homeowner. Carbon copied: Council President Scott Peters; Jaymie Bradford, Director of Council Affairs, Mayors Office; Rich Haas, Deputy Chief of Public Works; Mario Sierra, Director, General Services; Afshin Oskoui, Assistant Director, Engineering and Capital Projects; Alex Ruiz, Assistant Director, Water Department; Christopher Toth, Deputy Director, Metropolitan Wastewater Dept.; Mark Mercer, Deputy City Attorney; Peter Mesich, Deputy City Attorney; and Peter Yee, Liability Claims Supervisor, Risk Management. (Exhibit 76)

¹⁰⁷ 18 September 2007 e-mail from Jamal Batta, senior civil engineer for Engineering and Capital Projects, to Julio Fuentes, senior traffic engineer for Engineering and Capital Projects. Subject: "Soledad Mountain Road." Carbon copied: Deborah Van Wanseele, deputy director of Engineering and Capital Projects; and Michael Handal, associate engineer for Engineering and Capital Projects. (Exhibit 77)

¹⁰⁸ 19 September 2007 e-mail from Tammy Rimes, deputy director of the Purchasing Department, to Afshin Oskoui, deputy director of Engineering and Capital Projects. Subject: "Re: Urgent Help needed – Sole Source Consultant Agreement." Carbon copied: Dave Zoumaras, deputy director of Engineering and Capital Projects; David Jarrell, assistant deputy chief of Public Works; Hossein Ruhi, deputy director of Engineering and Capital Projects; Jamal Batta, senior civil engineer for Engineering and Capital Projects; Lance Wade; Marnell Gibson, deputy director of Engineering and Capital Projects; Richard Haas, deputy chief operating officer for Public Works; and Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department. (Exhibit 78)

Rob Hawk, senior geologist for the City, sent an e-mail to Deputy City Attorney Mark Mercer on 19 September 2007 to bring him up to speed on the many steps that the City had taken to deal with the Mount Soledad soil problem. The e-mail outlined:

- Meetings that had taken place with Geotechnical, Inc., the geotechnical consultant, regarding the scope of work;
- The time when the City expected to receive the official proposal from Geotechnical, Inc.;
- Stated that officials from the Mayor's staff; and officials at the General Services Department had been added to the e-mail distribution list and were being kept up to date on progress and incidents; and
- SDG&E had been contacted regarding protecting their utility assets; and
- The letter to residents would be sent on Wednesday [19 September 2007]; and
- The City's Public Information Officer established a "Hotline" for residents of Mount Soledad to call for information; and
- Development Services Department and Building Officials were briefed on risk issues; and
- City engineers agreed to set up "a survey monitoring grid to detect vertical and horizontal displacement," or soil movement, in the affected area.¹⁰⁹

The e-mail provided a good description of what the organization had accomplished to date.

Mercer responded to Hawk later that day and inquired if any public safety agencies had been contacted and if an evacuation plan had been established. Mercer wrote:

Do we need to inform the County or state agency if this is a health and safety issue? At what point do we need to evacuate residents?¹¹⁰

Hawk responded:

We usually make that determination for with [sic] the City Building Official.¹¹¹

Mercer inquired again if that had been done¹¹² and Hawk did not answer.

¹⁰⁹ 19 September 2007 e-mail from Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department, to Mark Mercer, deputy city attorney. Subject: "Soledad Mountain Road investigation/Stabilization Project Progress Report 1." (Exhibit 79)

¹¹⁰ 19 September 2007 e-mail from Mark Mercer, deputy city attorney, to Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department. (Exhibit 79)

¹¹¹ 19 September 2007 e-mail from Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department, to Mark Mercer, deputy city attorney. (Exhibit 79)

Meanwhile, on 19 September 2007, Batta sent an e-mail to Oskoui that raised similar concerns. Batta wrote:

Afshin:

I am talking with Traffic Ops to reduce the traffic speed on the road to minimize vibration...I was thinking that at some point, we may need to get in touch with the Fire and Police Departments to alert them about the situation of the road / slope, in case they want to draw their contingency plan in the event of a disaster.¹¹³

Oskoui replied:

Please contact Chief Maheu (PD), and Chief Manier to brief them about our efforts in the area.¹¹⁴

Batta sent an e-mail to Executive Assistant Police Chief Willam Maheu which stated:

Hi Chief:

We are trying to work on the subject to protect existing utilities and to have contingency plans in the event of any unforeseen conditions. The section we are concerned about is between 5685 – 5735 Soledad Mountain Road.¹¹⁵

This e-mail series represents the first communication reflecting any discussion of the possibility of a “disaster” that would require a Fire and Police presence to deal with public safety issues on Soledad Mountain Road.

¹¹² 19 September 2007 e-mail from Mark Mercer, deputy city attorney, to Rob Hawk, senior engineering geologist for the City’s Engineering and Capital Projects Department. Subject: “Re: Soledad Mountain Road investigation/Stabilization Project Progress Report 1.” (Exhibit 79)

¹¹³ 19 September 2007 e-mail from Jamal Batta, senior civil engineer for Engineering and Capital Projects, to Afshin Oskoui, deputy director of Engineering and Capital Projects. Subject: “RE: Soledad Mountain Rd.” Carbon copied: Dave Zoumaras, deputy director of Engineering and Capital Projects; Richard Haas, deputy chief operating officer for Public Works; Rob Hawk, senior engineering geologist for the City’s Engineering and Capital Projects Department; and Hossein Ruhi, deputy director of Engineering and Capital Projects. (Exhibit 80)

¹¹⁴ 20 September 2007 e-mail from Afshin Oskoui, deputy director of Engineering and Capital Projects, to Jamal Batta, senior civil engineer for Engineering and Capital Projects. Subject: “RE: Soledad Mountain Rd.” Carbon copied: Dave Zoumaras, deputy director of Engineering and Capital Projects; Richard Haas, deputy chief operating officer for Public Works; Rob Hawk, senior engineering geologist for the City’s Engineering and Capital Projects Department; and Hossein Ruhi, deputy director of Engineering and Capital Projects. (Exhibit 81)

¹¹⁵ 20 September 2007 e-mail from Jamal Batta, senior civil engineer for Engineering and Capital Projects, to William Maheu, executive assistant chief of the San Diego Police Department. Subject: “Soledad Mountain Road.” (Exhibit 82)

Meanwhile, City officials in the Engineering and Capital Projects Department worked to execute a plan to reduce traffic speed on Mount Soledad Road. Duncan Hughes, senior traffic engineer for Engineering and Capital Projects, responded to Batta and asked if the situation on Mount Soledad Road was “an immediately dangerous condition?”¹¹⁶ Batta responded, “Yes.”¹¹⁷ Hughes responded:

So, in your engineering judgment, based on the dangerous condition, what would be a safe speed? And, would closing the road not be safer?¹¹⁸

Batta responded:

Closing the road is not an option at this time. We need traffic to move slower near the 5700 block of Soledad Mountain Road. This is the most critical area of the road.¹¹⁹

Batta provided no information about the why the road could not be closed despite the “immediately dangerous condition.” Batta sent a subsequent e-mail that suggested a reduced speed of 25 miles per hour (mph), a reduction from the normal posted speed of 35 mph.¹²⁰

Meanwhile, the draft of the letter being sent to Mount Soledad Homeowners was revised by Richard Haas, deputy chief operating officer for Public Works. Haas’s letter stated:

Dear Soledad Mountain Road Homeowner:
As you are aware, there have been a series of water leaks on service connections from our main water line on your street **caused by soil**

¹¹⁶ 19 September 2007 e-mail from Duncan Hughes, senior traffic engineer for Engineering and Capital Projects, to Jamal Batta, senior civil engineer for Engineering and Capital Projects, and Julio Fuentes, senior traffic engineer for Engineering and Capital Projects. (Exhibit 83)

¹¹⁷ 19 September 2007 e-mail from Jamal Batta, senior civil engineer for Engineering and Capital Projects, to Duncan Hughes, senior traffic engineer for Engineering and Capital Projects. (Exhibit 83)

¹¹⁸ 19 September 2007 e-mail from Duncan Hughes, senior traffic engineer for Engineering and Capital Projects, to Jamal Batta, senior civil engineer for Engineering and Capital Projects. (Exhibit 83)

¹¹⁹ 19 September 2007 e-mail from Jamal Batta, senior civil engineer for Engineering and Capital Projects, to Duncan Hughes, senior traffic engineer for Engineering and Capital Projects. (Exhibit 83)

¹²⁰ 20 September 2007 e-mail from Jamal Batta, senior civil engineer for Engineering and Capital Projects, to Duncan Hughes, senior traffic engineer for Engineering and Capital Projects. Subject: “Re: Soledad Mountain Road.” (Exhibit 83)

movement????. This resulted in unscheduled repair to water services, and traffic disruption due to repair activities.[Emphasis original]¹²¹

Haas sent an e-mail to Hawk and inquired whether the soil movement was caused by the water leaks. Hawk responded, “I cannot unequivocally determine that from what I know.”¹²² The final draft was then sent City Attorney’s office for final approval before its dissemination. Deputy City Attorney Mercer repeated his advice and urged the removal of any language that may provide evidence to support the claim that damage was caused by water. Mercer wrote:

I think we should keep the cause of the water leak out of the letter. It could be an indication that our water line caused the leaks.
Regards,
Mark¹²³

As a result, the language included by Haas regarding the water damage was removed from the opening sentence of the letter.

Meanwhile, the plans for the high lining were finalized and set to begin on Thursday, 27 September 2007, according to an e-mail sent by Stan Medina, construction program manager for the Water Department.¹²⁴ This date, however, was not soon enough to satisfy Jamal Batta, senior civil engineer for Engineering and Capital Projects. Batta responded to Medina and stated that the water high-lining project needed to be completed quicker:

Stan:

¹²¹ 19 September 2007 e-mail from Richard Haas, deputy chief operating officer for Public Works, to Rob Hawk, senior engineering geologist for the City’s Engineering and Capital Projects Department. (Exhibit 84)

¹²² 19 September 2007 e-mail from Rob Hawk, senior engineering geologist for the City’s Engineering and Capital Projects Department, to Richard Haas, deputy chief operating officer for Public Works. Subject: “Re: Soledad Mountain Road water line/letter to customers”. Carbon copied: Jim Fisher, deputy director of the Water Department; Richard Haas, deputy chief operating officer for Public Works; David Jarrell, assistant deputy chief of Public Works ; Mark Mercer, deputy city attorney; Afshin Oskoui, deputy director of Engineering and Capital Projects; Ray Palmucci, deputy city attorney; Hossein Ruhi, deputy director of Engineering and Capital Projects; Alex Ruiz, assistant director of the Water Department; Mario Sierra, director of the General Services Department; and Christopher Toth, deputy director of the Water Department. (Exhibit 85)

¹²³ 19 September 2007 e-mail from Mark Mercer, deputy city attorney, to Christopher Toth, deputy director of the Water Department; and Rob Hawk, senior engineering geologist for the City’s Engineering and Capital Projects Department. Subject: “RE: Soledad Mountain Road water line/letter to customers.” (Exhibit 86)

¹²⁴ 19 September 2007 e-mail from Stan Medina, construction program manager for the Water Department, to Alex Ruiz, assistant director of the Water Department. (Exhibit 87)

Is this the earliest you can do the hi-line. Can you do it earlier? It is critical that we do it ASAP.

Please let me know before 2 p.m. today, if you are willing to change the date of the hi-line from 9/27/07 to an earlier date. I want to get the letter out this afternoon.

Thanks, jamal [sic]¹²⁵

Medina agreed to complete the high-lining project on 20 September 2007 and the letter to residents of the area impacted by the work was hand-delivered on 19 September 2007.¹²⁶ The final letter delivered to residents stated:

Dear Soledad Mountain Road Homeowner:

As you aware, there have been a series of water leaks on service connections from our main water line on your street. This resulted in unscheduled repair to water services, and traffic disruptions due to repair activities. The purpose of this letter is to inform you that the City of San Diego will be installing above ground piping ("highline") to provide water service to your property beginning on September 20, 2007. At that time, the Water Department will isolate and depressurize (turn-off) the existing underground water main. In addition, City forces will be conducting a soil investigation in the area to determine the cause of the recent leaks. While most of this work will take place in the street and sidewalk, there will be some unavoidable inconvenience to local residents as equipment and personnel take up parking.

The purpose of this effort is to minimize potential for damage to the water main and roadway from possible soil movement in the 5700 block of Soledad Mountain Road. Until the cause of the leaks has been identified and corrected, the City will utilize the highline to provide water service for

¹²⁵ 19 September 2007 e-mail from Jamal Batta, senior civil engineer for Engineering and Capital Projects, to Stan Medina, construction program manager for the Water Department. Subject: "Re: Hi Line on Mt Soledad." Carbon copied: Afshin Oskoui, deputy director of Engineering and Capital Projects; Alex Ruiz, assistant director of the Water Department; Hossein Ruhi, deputy director of Engineering and Capital Projects; Jim Fisher, deputy director of the Water Department; Richard Haas, deputy chief operating officer for Public Works; and Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department. (Exhibit 87)

¹²⁶ 19 September 2007 e-mail from Jamal Batta, senior civil engineer for Engineering and Capital Projects, to Afshin Oskoui, deputy director of Engineering and Capital Projects; Alex Ruiz, assistant director of the Water Department; Christopher Toth, deputy director of the Water Department; David Jarrell, assistant deputy chief of Public Works; Hossein Ruhi, deputy director of Engineering and Capital Projects; Jaymie Bradford, director of council affairs for the Office of Mayor Jerry Sanders; Jim Fisher, deputy director of the Water Department; Mario Sierra, director of the General Services Department; Mark Mercer, deputy city attorney; Ray Palmucci, deputy city attorney; Richard Haas, deputy chief operating officer for Public Works; and Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department. (Exhibit 88)

your property and other properties that depend upon the subject water main.

We appreciate your patience and cooperation during our activities in the area to protect the utilities, and investigate and identify the cause of the problem. During this time, please contact Carol Drummond at (619) 533-3872 if you have any questions. If you notice any service leaks, please immediately call our utility hotline at (619) 515-3525.

Hossein Ruhi
City Engineer¹²⁷

The following City officials received a copy of the letter along with Soledad Mountain Road residents: Council President Scott Peters; Jaymie Bradford, director of council affairs for the Office of Mayor Jerry Sanders; Rich Haas, deputy chief of Public Works; Mario Sierra, director of General Services; Afshin Oskoui, assistant director of Engineering and Capital Projects; Alex Ruiz, assistant director of the Water Department; Christopher Toth, deputy director of Metropolitan Wastewater Dept.; Mark Mercer, deputy city attorney; Peter Mesich, deputy city attorney; and Peter Yee, liability claims supervisor for the Risk Management Department .

Meanwhile, Batta requested any cracks reported on Mount Soledad Road be fixed immediately, citing concerns that the water from a forecasted rain storm might enter the cracks. Batta wrote:

We have contacted Street Division to seal the cracks and two point/location repairs. We already sent the location to Streets...It is critical that we do these before the rain forecasted this weekend.¹²⁸

Brown responded that any call regarding cracks in Soledad Mountain Road would be addressed and fixed with an "immediate response."¹²⁹ Michael Handal, associate engineer for Engineering and Capital Projects, followed up with an e-mail detailing the amount of work pending to be done the subject road, which included:

Soledad Mtn Road – crackseal from Corona Ct to 5747 Soledad Mtn Rd (600'). City crews will place no parking signs on 9/19. Roadworks Inc will crackseal on 9/20.

¹²⁷ See at *Id.*

¹²⁸ 19 September 2007 e-mail from Jamal Batta, senior civil engineer for Engineering and Capital Projects, to John Brown, assistant director of the General Services Department. (Exhibit 89)

¹²⁹ 19 September 2007 e-mail from John Brown, assistant director of the General Services Department, to Jamal Batta, senior civil engineer for Engineering and Capital Projects. Subject: "Fwd: Re: Urgent Help needed – Sole Source Consultant Agreement." (Exhibit 89)

Soledad Mtn Road – approximately 400 sq ft patch needed at 5725. Crews will be dispatched on 9/20.

5734 DesertView [sic] Dr – approximately a 400 sq ft remove and replace area of ‘heaved’ pavement. Crews will be dispatched on 9/20.

Underground Service Alert has not been called. The area will be markers and called on 9/19 pm.¹³⁰

Meanwhile, an e-mail from an engineer at SDG&E started to discuss the issue with Hawk. David Reistetter, senior engineer/project manager for Sempra Utilities, wrote an e-mail to Rob Hawk memorializing a conversation where Hawk had stated that the power lines on the street were tightening and that underground gas lines may be in danger. Reistetter wrote:

Rob Hawk, City of San Diego Engineering Department, I am sending to you my email address per your phone request.

You have requested SDG&E to review electric and gas facilities in the vicinity of 5695 to 5725 Soledad Mountain Road due to observed land movement.

You described that the overhead electric lines are tight with no slack or catenary and that SDG&E has recently repaired service line gas leak(s).

You also described that the City of San Diego is in the process of highlining a water main to avoid breakage due to anticipated earth movement and that you are having a Geotechnical Report prepared to assess this area.¹³¹

SITUATION CONTINUES TO DETERIORATE

At this point, Rob Hawk began to have consistent communications with the engineering department at San Diego Gas & Electric due to the stretching of power lines. SDG&E customers on Soledad Mountain Road also started reporting gas leaks from the pipes underground.¹³²

¹³⁰ 19 September 2007 e-mail from Michael Handal, associate engineer for Engineering and Capital Projects, to Gene Matter, associate civil engineer for the General Services Department; and Jose Castillo, public works superintendent for the General Services Department. Subject: “Re: Soledad Mtn Rd & Desert View Dr”. Carbon copied: Donald Bender, public works superintendent for the General Services Department; Hasan Yousef, public works superintendent for the General Services Department; Jamal Batta, senior civil engineer for Engineering and Capital Projects; Rob Hawk, senior engineering geologist for the City’s Engineering and Capital Projects Department; Rockwell Kelly, public works superintendent for the General Services Department; Ron Dodds, coordinator for the Engineering and Capital Projects Department; and Stan Medina, construction program manager for the Water Department. (Exhibit 90)

¹³¹ 19 September 2007 e-mail from Dave Reistetter, senior engineer/project manager for Sempra Utilities, to Rob Hawk, senior engineering geologist for the City’s Engineering and Capital Projects Department. Subject: “Soledad Mountain Road Earth Movement TB 1248 A2”. (Exhibit 91)

¹³² 20 September 2007 e-mail from Monica Curry, representative of Sempra Utilities, to Rob Hawk, senior engineering geologist for the City’s Engineering and Capital Projects Department. (Exhibit 92)

In response to a conversation that Hawk had with SDG&E officials,¹³³ the company sent engineers up to survey the situation. Monica Curry, a representative of SDG&E, sent Hawk an e-mail that stated the company's crews followed up on gas leaks and checked on reported gas leaks. No problems were found, according to Curry.¹³⁴ Hawk responded and expressed concern with the SDG&E analysis. Hawk wrote:

Monica: see the attached photograph. The two lines directly above the blue suburban are parallel, and attaced [sic] to the same poles, and should be roughly parallel. The upper line has laterals that cross the street. Note how that line is pulled approximately 1 foot to the right, toward the uphill side of Soledad Mountain Road (West). That condition would be consistent with the estimated 3-4 inches of horizontal widening we observe in the pavement that would be reflected in the lateral tension. However, we are not experts in your field, so if your staff do [sic] not feel that the lines are at risk, then we accept your assessment.¹³⁵

Curry responded and reassured Hawk that the poles were not in danger.¹³⁶

Hawk received the proposed scope of work and cost estimate for the geological study from Helenschmidt Geotechnical, Inc. on 20 September 2007. The firm planned to drill into the ground, install monitoring devices, measure landslide movements, develop a mitigation plan and an emergency plan.¹³⁷ More importantly, the proposal provided a detailed analysis of the situation underground on Soledad Mountain Road. The report stated:

¹³³ 19 September 2007 e-mail from Dave Reistetter, senior engineer/project manager for Semptra Utilities, to Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department. Subject: "Soledad Mountain Road Earth Movement TB 1248 A2." (Exhibit 91)

¹³⁴ 20 September 2007 e-mail from Monica Curry, representative of SDG&E, to Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department. (Exhibit 92)

¹³⁵ 20 September 2007 e-mail from Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department, to Boyle, Neil; Cindy Cecil, civil/structural engineering team lead for San Diego Gas & Electric; Givianrad, M.R.; Jol, Peter J; Serrano, Mark A. [SDG&E]; Truong, Can; Zepeda, Pete. Subject: "RE: 5695-5725 Soledad Mountain Road." (Exhibit 93)

¹³⁶ 20 September 2007 e-mail from Monica Curry, representative of SDG&E, to Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department; Boyle, Neil; Cindy Cecil, civil/structural engineering team lead for San Diego Gas & Electric; Givianrad, M.R.; Jol, Peter J; Serrano, Mark A. [SDG&E]; Truong, Can; Zepeda, Pete. Subject: "RE: 5695-5725 Soledad Mountain Road." (Exhibit 93)

¹³⁷ 20 September 2007 letter from Stanly Helenschmidt, principal geotechnical engineer for Helenschmidt Geotechnical, Inc., to Michael Handal, associate engineer for Engineering and Capital Projects. Subject: "Proposal for Installation of Inclinator Casings and Monitoring of Landslide Movement Re: Soledad Mountain Road, La Jolla, California." (Exhibit 94)

SITE CONDITION AND DISTRESS

The recently activated landslide extends from the west side of Soledad Mountain road near 5695 to 5725 toward the westerly portion of Desert View Drive. The landslide currently is approximately 210 feet wide at the head and 230 feet wide at the base (Desert View Drive) where it appears to be toeing up through the pavement. Surface expressions of landsliding include tearing and separation of asphalt pavement, distress to residence foundations and hardscape improvements at 5695 to 5725 Soledad Mountain Road and damage to a free standing wall on the east side of Desert View Drive... The site of the current landslide is approximately 200 feet north of a previous landslide that occurred in the 1960s.¹³⁸

Hawk forwarded the proposal to City officials and noted that the proposal was “reasonable for this kind of work.”¹³⁹

The project, however, could not move forward because of lack of funding.¹⁴⁰ Batta, meanwhile, continued to seek alternate funding sources for the installation of the inclinometers.¹⁴¹ Richard Haas, deputy chief of public work, officially sent a memorandum requesting the approval of the sole source contract for Helenschmidt Geotechnical on 21 September 2007.¹⁴² However, a funding source could not be found, according an e-mail sent to Batta from Peter Yee:

¹³⁸ See at *Id.*

¹³⁹ 20 September 2007 e-mail from Rob Hawk, senior engineering geologist for the City’s Engineering and Capital Projects Department, to Jamal Batta, senior civil engineer for Engineering and Capital Projects; Michael Handal, associate engineer for Engineering and Capital Projects; and Hossein Ruhi, deputy director of Engineering and Capital Projects. Subject: “Fwd: Proposal.” Carbon copied: Marnell Gibson, deputy director of Engineering and Capital Projects; Afshin Oskoui, deputy director of Engineering and Capital Projects; and Hossein Ruhi, deputy director of Engineering and Capital Projects. (Exhibit 94)

¹⁴⁰ 20 September 2007 e-mail from Peter Yee, liability claims supervisor for the City’s Risk Management Department, to Jamal Batta, senior civil engineer for Engineering and Capital Projects. (Exhibit 95)

¹⁴¹ 20 September 2007 e-mail from Jamal Batta, senior civil engineer for Engineering and Capital Projects, to Afshin Oskoui, deputy director of Engineering and Capital Projects; Dave Zoumaras, deputy director of Engineering and Capital Projects; Hossein Ruhi, deputy director of Engineering and Capital Projects; Marnell Gibson, deputy director of Engineering and Capital Projects; and Rob Hawk, senior engineering geologist for the City’s Engineering and Capital Projects Department. Subject: “FWD: Mt. Soledad Geological Workup.” (Exhibit 95)

¹⁴² 21 September 2007 memorandum from Richard Haas, deputy chief of public work, to Tammy Rimes, deputy director of the Purchasing Department. Subject: “Soledad Mountain Road Repair – Sole Source Consultant Agreement.” (Exhibit 96)

Jamal, our director has spoke with Jay Goldstone's office on funding for the Geological expert for inclinometer monitoring etc which you said would cost about 60k. Jay [Goldstone] has stated at this time these geological expenses should come from Engineering funds. At this point no claims pending and it is unclear what it causing the movement.¹⁴³

Batta and other City officials in the Engineering and Capital Project Department continued searching for funds. In an e-mail to Haas, Afshin Oskoui explained:

Rich, not sure what engineering funds we can tap into at this time. We either have to tap into some of the deferred maintenance funds or inappropriated reserves. We don't have much time to chase the funding down at this time. We can wait until Monday for us to get back...¹⁴⁴

Haas replied that he would discuss the issue with Goldstone.¹⁴⁵

Batta and Oskoui, meanwhile, continued to search for a funding source. The correspondence indicates that both Batta and Oskoui were particularly concerned about the cost of the consultant and worked to keep the cost below \$250,000. Batta wrote:

Kerry,

This is a follow up to our discussion last week...Can DSD staff do the archeology monitoring in the event it is needed? I am saying this because I don't want to increase the consultant's proposal which is I think in the range \$200K. Any increase beyond \$250K will kick me to a different lengthy approval process.¹⁴⁶

The process that Batta referred to was outlined in an e-mail discussion he had with the City Attorney's Office. Peter Mesich, a deputy city attorney, told Batta that issuing a sole source contract requiring more than \$250,000 in funding required a declaration of an emergency and approval of the allocation by the City Council at a public meeting.

Meanwhile, Batta was close to completing negotiations with the geotechnical consultants for the two phases of the work on Soledad Mountain road. The Mayor's

¹⁴³ 21 September 2007 e-mail from Peter Yee, liability claims supervisor for the City's Risk Management Department, to Jamal Batta, senior civil engineer for Engineering and Capital Projects. Subject: "Mt. Soledad Earthmovement [sic]." (Exhibit 97)

¹⁴⁴ 21 September 2007 e-mail from Afshin Oskoui, deputy director of Engineering and Capital Projects, to Richard Haas, deputy chief operating officer for Public Works. (Exhibit 98)

¹⁴⁵ 21 September 2007 e-mail from Richard Haas, deputy chief operating officer for Public Works to Afshin Oskoui, deputy director of Engineering and Capital Projects, and Jamal Batta, senior civil engineer for Engineering and Capital Projects. Subject: "RE: Soledad Mountain Road." (Exhibit 98)

¹⁴⁶ 22 September 2007 e-mail from Jamal Batta, senior civil engineer for Engineering and Capital Projects, to Kerry Santoro, senior planner for Engineering and Capital Projects. (Exhibit 99)

Office, however, did not approve the funding to start the geotechnical study on Soledad Mountain Road.¹⁴⁷ Batta wrote:

We already have a proposal for \$60K from the consultant to install the Inclinometers. The consultant will give me by Wednesday another proposal for the remainder of the geotechnical work. I expect this portion of the proposal to cost \$150K. The total geotechnical work will be around \$220K or so. Funding is not identified yet.¹⁴⁸

At this point, the Mayor's Office approval was the last hurdle to cross before the start of the geotechnical work.

The problem now began attracting the attention of the Fire Department because Batta notified the public safety agencies. On 25 September 2007, the Fire Department Spokesman, Maurice Luque, sent an e-mail to the Mayor's communications staff to notify of a large crack found on the hillside.

Regarding the landslide issue in the Mt. Soledad area...Fire-Rescue has also been in touch with Jamal Batta, a city engineer in capital projects, about a landslide problem at 5700 Soledad Mtn. Road., the cross street is Palomino – the road is separating causing a potential for landslide. Batta says he is working with the Water dept, Streets and sewer to relocate sewer mains, cable, gas to decrease the potential for landslide...I have also attached the satellite pictures of what appears to be a large crack or fissure in the area of 5700 Soledad Mtn. rd.¹⁴⁹

¹⁴⁷ 24 September 2007 e-mail from Jamal Batta, senior civil engineer for Engineering and Capital Projects, to Afshin Oskoui, deputy director of Engineering and Capital Projects. Subject: "Soledad Mountain Road – Sole Source Memo." Carbon copied: Dave Zoumaras, deputy director of Engineering and Capital Projects; David Jarrell, assistant deputy chief of Public Works; Hossein Ruhi, deputy director of Engineering and Capital Projects; Michael Handal, associate engineer for Engineering and Capital Projects; Richard Haas, deputy chief operating officer for Public Works; and Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department. (Exhibit 100)

¹⁴⁸ 24 September 2007 e-mail from Jamal Batta, senior civil engineer for Engineering and Capital Projects, to Afshin Oskoui, deputy director of Engineering and Capital Projects. Subject: "Soledad Mountain Road – Sole Source Memo." Carbon copied: Dave Zoumaras, deputy director of Engineering and Capital Projects; David Jarrell, assistant deputy chief of Public Works; Hossein Ruhi, deputy director of Engineering and Capital Projects; Michael Handal, associate engineer for Engineering and Capital Projects; Richard Haas, deputy chief operating officer for Public Works; and Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department. (Exhibit 100)

¹⁴⁹ 25 September 2007 e-mail from Maurice Luque, communications director for the San Diego Fire Department, to Bill Harris, deputy press secretary for the Mayor; George Biagi, deputy press secretary for Mayor Jerry Sanders; and Fred Sainz, press secretary for Mayor Jerry Sanders. (Exhibit 101)

The e-mail was sent to the Mayor's executive communication staff. Bill Harris, deputy press secretary for the Mayor, forwarded the e-mail to the executive leadership of the Wastewater Department.¹⁵⁰

Oskoui sent an e-mail to Fire Chief Tracy Jarman to express appreciation for keeping the Mayor's Office informed of the situation on Soledad Mountain Road. Oksoui wrote in a 25 September 2007 e-mail:

Hi Tracy,
We appreciate Maurice's effort to keep folks on the 11th floor [the floor of City Hall occupied by the Mayor and his staff] informed of what is happening. We have a project team that's working on this issue, including keeping everyone in the loop (Mayor and Council Offices included). The other element was to notify Public Safety about our efforts, and also alerting you for the purposes of preparedness.¹⁵¹

That same day, the work order was processed in the City and the high lining on Mount Soledad Road was completed.¹⁵² The problems did not end there.

Soledad Mountain Road resident Tom Crabbe sent a letter to Hawk on 25 September 2005 to alert him of another sinking hole on the street and the collection of more water. Crabbe wrote:

Mr. Hawk,
The large trucks traveling by are causing large sink holes in the new repair areas these are in front of 5695 soledad mtn rd. large amounts of water from the gutter is seeping into the street. can it please be repaired to keep any further damages to the street and surrounding areas. this large hole is over the gas line repair.¹⁵³

¹⁵⁰ 25 September 2007 e-mail from Bill Harris, deputy press secretary for Mayor Jerry Sanders, to Alex Ruiz, assistant director of the Water Department; Jim Barrett, director of the Water Department; and Richard Haas, deputy chief operating officer for Public Works. Subject: "Fwd: more on the landslide problems on Mt. Soledad." (Exhibit 101)

¹⁵¹ 25 September 2007 e-mail from Afshin Oskoui, deputy director of Engineering and Capital Projects, to Tracy Jarman, chief of the City of San Diego Fire Department. Subject: "Re: Fwd: more on the landslide problems on Mt. Soledad." (Exhibit 102)

¹⁵² 25 September 2007, Sewer/Water Infrastructure Management – "Work Order Data Entry." (Exhibit 103)

¹⁵³ 25 September 2007 e-mail from Tom Crabbe, resident of Soledad Mountain Road, to Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department. (Exhibit 104)

Hawk responded and stated that the problem would be forwarded to the appropriate project manager.¹⁵⁴ Alarming, Oskoui sent an e-mail to City officials questioning what the leak was. Oskoui wrote, “Not sure if this is water, gas, or ?? at this point, so can we have a crew out asap to patch up the pothole.”¹⁵⁵ A city crew was sent up to repair the sinkhole and remove the water collected in the flooding.¹⁵⁶

In response to Crabbe’s complaint that heavy vehicles were causing the road to sink, Batta continued the effort to divert heavy traffic from Soledad Mountain Road – in addition to having the speed limit reduced. Batta sent an e-mail on 25 September 2007 stating:

I talked last week to Traffic Ops to reduce the speed on the road to 25mph. I will also discuss with them the possibility of diverting big trucks from traveling on the road. We filled the cracks last week but we don’t know what is underneath the road (eg. Voids). Therefore, reducing speed along with diverting large trucks could help to reduce the vibration and load on the road.¹⁵⁷

¹⁵⁴ 25 September 2007 e-mail from Rob Hawk, senior engineering geologist for the City’s Engineering and Capital Projects Department, to Tom Crabbe, resident of Soledad Mountain Road. Subject: “Re: Fwd: Re: Soledad Mountain Road water line/letter to customers.” Carbon copied: Michael Handal, associate engineer for Engineering and Capital Projects; and Jamal Batta, senior civil engineer for Engineering and Capital Projects. (Exhibit 104)

¹⁵⁵ 25 September 2007 e-mail from Afshin Oskoui, deputy director of Engineering and Capital Projects, to Hasan Yousef, public works superintendent for the General Services Department; Jamal Batta, senior civil engineer for Engineering and Capital Projects; Jim Fisher, deputy director of the Water Department; Michael Handal, associate engineer for Engineering and Capital Projects; and Rob Hawk, senior engineering geologist for the City’s Engineering and Capital Projects Department. Subject: “Fwd: Re: Fwd: Re: Soledad Mountain Road water line/letter to customers.” Carbon copied: Dave Zoumaras, deputy director of Engineering and Capital Projects; David Jarrell, assistant deputy chief of Public Works; Hossein Ruhi, deputy director of Engineering and Capital Projects; Jim Barrett, director of the Water Department; John Brown, assistant director of the General Services Department; Mario Sierra, director of the General Services Department; Marnell Gibson, deputy director of Engineering and Capital Projects; Richard Haas, deputy chief operating officer for Public Works; and Stan Medina, construction program manager for the Water Department. (Exhibit 105)

¹⁵⁶ 25 September 2007 Sewer/Water Infrastructure Management – “Work Order Data Entry.” (Exhibit 106)

¹⁵⁷ 25 September 2007 e-mail from Jamal Batta, senior civil engineer for Engineering and Capital Projects, to Afshin Oskoui, deputy director of Engineering and Capital Projects; Gene Matter, associate civil engineer for the General Services Department; Hasan Yousef, public works superintendent for the General Services Department; and Rob Hawk, senior engineering geologist for the City’s Engineering and Capital Projects Department. Subject: “Fwd: Re: Fwd: Re: Soledad Mountain Road water line/letter to customers.” Carbon copied: Dave Zoumaras, deputy director of Engineering and Capital Projects; David Jarrell, assistant deputy chief of Public Works; Hossein Ruhi, deputy director of Engineering and Capital Projects; Jim Barrett, director of the Water Department; John Brown, assistant director of the General Services Department; Mario Sierra, director of the General Services Department; Marnell Gibson, deputy director of Engineering and Capital Projects; Richard Haas, deputy chief operating officer for Public Works; and Stan Medina, construction program manager for the Water Department. (Exhibit 107)

Meanwhile, Batta visited the site to inspect the sinkhole himself and found that the problem is a result of poor repair of a gas leak by SDG&E. Batta wrote:

FYI_I [sic] just came from the job site. Nothing is serious. As I suspected, the SDG&E patch around their connection was not done good....It seems that a car passed over it and the trench settled/deflected...The person who sent the photo was outside and we talked about it.¹⁵⁸

City officials involved with the project commended Batta for taking charge of the situation and for talking with residents.¹⁵⁹

Meanwhile, the City's wastewater department began dispatching work crews to Soledad Mountain Road to perform video monitoring of the pipes under the street and perform maintenance.¹⁶⁰

It wasn't long before Crabbe contacted the City with another problem. He sent another e-mail to Hawk on 26 September 2007 that outlined concerns that wet soil was being excavated as the sewer crews were working and added that there was additional water damage to neighbors' homes. Crabbe wrote:

¹⁵⁸ 25 September 2007 e-mail from Jamal Batta, senior civil engineer for Engineering and Capital Projects, to Afshin Oskoui, deputy director of Engineering and Capital Projects; Gene Matter, associate civil engineer for the General Services Department; Hasan Yousef, public works superintendent for the General Services Department; and Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department. Subject: "Fwd: Re: Fwd: Re: Soledad Mountain Road water line/letter to customers." Carbon copied: Dave Zoumaras, deputy director of Engineering and Capital Projects; David Jarrell, assistant deputy chief of Public Works; Hossein Ruhi, deputy director of Engineering and Capital Projects; Jim Barrett, director of the Water Department; John Brown, assistant director of the General Services Department; Mario Sierra, director of the General Services Department; Marnell Gibson, deputy director of Engineering and Capital Projects; Richard Haas, deputy chief operating officer for Public Works; and Stan Medina, construction program manager for the Water Department. (Exhibit 108)

¹⁵⁹ 25 September 2007 e-mail from Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department, to Jamal Batta, senior civil engineer for Engineering and Capital Projects; Afshin Oskoui, deputy director of Engineering and Capital Projects; Gene Matter, associate civil engineer for the General Services Department; Hasan Yousef, public works superintendent for the General Services Department; and Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department. Subject: "Fwd: Re: Fwd: Re: Soledad Mountain Road water line/letter to customers." Carbon copied: Dave Zoumaras, deputy director of Engineering and Capital Projects; David Jarrell, assistant deputy chief of Public Works; Hossein Ruhi, deputy director of Engineering and Capital Projects; Jim Barrett, director of the Water Department; John Brown, assistant director of the General Services Department; Mario Sierra, director of the General Services Department; Marnell Gibson, deputy director of Engineering and Capital Projects; Richard Haas, deputy chief operating officer for Public Works; and Stan Medina, construction program manager for the Water Department. (Exhibit 108)

¹⁶⁰ 25 September 2007 Work orders for "unscheduled maintenance" of the pipes at 5715 Soledad Mountain Road. Work Order Nos. 12, 15, 16, and 17. (Exhibit 109)

Andy Rusnak and I watched the sewer crew today, down by 5685 Soledad mtn rd. [sic] They came upon a clog of rocks and mud. Andy asked Mr. Parker where the rock and mud were coming from and he said the lateral is broken and the rock is new rock from yesterday's construction. The lateral is not going 5685, the sewer from 5685 flows down to Desert View not to Soledad mtn. rd. [sic] The lateral must be from the old home that used to be there. As you know 5685 is having problems as are many homes on Soledad mtn. rd. [sic] The owner has mentioned to the other neighbors he has noticed moisture soaking under his garage lately. I just thought this might be important.¹⁶¹

Hawk responded to Crabbe and told him that it would be looked into.¹⁶²

Meanwhile, the request to approve the funding for the geotechnical study was approved. Downs Prior, senior contract specialist for Metro Wastewater, stated:

The designated area of concern, the 5700 block of Soledad Mountain road, is on the verge of possible catastrophic failure due to the continual ground movement caused by an unknown condition...A catastrophic failure would pose a major health and safety issue, as well as possibly contributing to a potential landslide of an adjacent slope/ridge with several single family homes located on top.¹⁶³

The City's Engineering and Capital Improvements Department now had the allocation of \$250,000 to allow the geotechnical firm to test and install support beams.

THE HILL BEGINS TO SLIDE

While the City was securing the funds for the study, another crack was found on Soledad Mountain Road. Michael Handal, associate engineer for Engineering and Capital Projects, wrote:

Please see attached e-mail. According to the e-mail, at 5714 Soledad mtn [sic] rd. where the curb meets the street small crack has opened up and run

¹⁶¹ 26 September 2007 e-mail from Tom Crabber, resident of Soledad Mountain Road, to Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department. (Exhibit 110)

¹⁶² 26 September 2007 e-mail from Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department, to Tom Crabbe, resident of Soledad Mountain road. Subject: "Re: Fwd: Re: Soledad Mountain Road water line/letter to customers." (Exhibit 110)

¹⁶³ 27 September 2007 memorandum from Downs Prior, senior contract specialist for Metro Wastewater, to Tammy Rimes, deputy director of the Purchasing Department. Subject: "Sole Source Request – Helenschmidt Geotechnical, Inc. for Soledad Mountain Road Repair – Sole Source Consultant Agreement." (Exhibit 111)

off is seeping into the ground. SDG&E worked all night on a gas leak at 5714 soledad mtn rd. [sic]

Please seal the crack asap.¹⁶⁴

The City sent a crew to fix the crack.¹⁶⁵

The next day, 28 September 2007, another problem was reported to the City. This time, the fire hydrant on Desert View Drive was leaking.¹⁶⁶

A crew from SDG&E was also dispatched to the area. Cindy Cecil, civil/structural engineering team leader for San Diego Gas & Electric, sent Handal an alarming e-mail about the condition of the soil on Soledad Mountain Road. Cecil stated:

You probably got my phone message, but I thought I should reiterate what I observed at the site this morning....The residence at 5725 Mt. Soledad has experienced even more movement, as evidenced by the extremely large crack at the corner of the garage that continues around the side of garage. This crack has opened up significantly since I saw it last week. It appears that even with the leaking water line in the road having been repaired & taken out of the road, the slide is continuing.

The gas service that experienced another leak on Wednesday has been repaired. When that line was cut to make the repair, there was significant movement in the line, indicating again that significant movement has taken place since the same line was repaired last week.¹⁶⁷

Cecil also forwarded a set of "photos of some of the increased & new damage to the residence at 5725 Soledad Mtn Rd."¹⁶⁸

¹⁶⁴ 27 September 2007 e-mail from Michael Handal, associate engineer for Engineering and Capital Projects, to Gene Matter, associate civil engineer for the General Services Department. (Exhibit 112)

¹⁶⁵ See at *Id.*

¹⁶⁶ 28 September 2007 e-mail from Jamal Batta, senior civil engineer for Engineering and Capital Projects, to Stan Medina, construction program manager for the Water Department. Subject: "Fwd: Water main in Desert View Drive Even." Carbon copied: Michael Handal, associate engineer for Engineering and Capital Projects; and Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department. (Exhibit 113)

¹⁶⁷ 28 September 2007 e-mail from Cindy Cecil, civil/structural engineering team lead for San Diego Gas & Electric, to Michael Handal, associate engineer for Engineering and Capital Projects. Subject: "RE: Soledad Mtn Rd." Carbon Copied: Dave Reistetter, senior engineer/project manager for Sempra Utilities; Samuel Harris, representative of Sempra Utilities. (Exhibit 114)

¹⁶⁸ See at *Id.*

Handal received an e-mail a few hours later from the City's geotechnical consultant also warning that the soil movement was occurring. Stanley Helenschmidt, principal geotechnical engineer for Helenschmidt Geotechnical, stated:

Mike Hart just gave me a call from the site and indicated that there appears to be continued movement at the toe area of the landslide. He expressed concern about the existing water main on the west side of DVD [Desert View Drive]. The fire hydrant in the area of distress has moved laterally (cumulative movement) of approximately 3 inches. Breakage of the water main is not likely to cause immediate acceleration of the landslide, however, flooding would be an issue.¹⁶⁹

Hawk forwarded the e-mail to the other City officials working on the project.¹⁷⁰

Meanwhile, the City issued a work order for a "BAD HYDRANT LEAK" at the 2700 block of Palamino Circle at the cross street of Soledad Mountain Road.¹⁷¹ Another work order was issued by the City five hours later, reporting that the "BAD HYDRANT LEAK" had been repaired.¹⁷² The problem, however, was not solved.

The City issued another work order on the morning of 29 September 2007 alerting of a leak on 5700 block of Desert View Drive and that the ground was moving.¹⁷³ The description of the problem on the work order stated: "STREET...LIFTING ASPHALT."¹⁷⁴ Another work crew was sent to Soledad Mountain Road on 30 September 2007. The work crew that reported to the site stated in a written report, "CONS CALLED STATES ASPHALT LIFTING."¹⁷⁵ The crew issued follow-up report that stated:

¹⁶⁹ 28 September 2007 e-mail from Stanly Helenschmidt, principal geotechnical engineer for Helenschmidt Geotechnical, to Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department. (Exhibit 115)

¹⁷⁰ 28 September 2007 e-mail from Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department, to Michael Handal, associate engineer for Engineering and Capital Projects. Subject: "Re: Water main in Desert View Drive Even". Carbon copied: Jamal Batta, senior civil engineer for Engineering and Capital Projects; and Ron Dodds, coordinator for the Engineering and Capital Projects Department. (Exhibit 115)

¹⁷¹ 28 September 2007 at 13:26, Sewer/Water Infrastructure Management – "Work Order Data Entry." (Exhibit 116)

¹⁷² 28 September 2007 at 18:55, Sewer/Water Infrastructure Management – "Work Order Data Entry." (Exhibit 117)

¹⁷³ 29 September 2007 at 7:05, Sewer/Water Infrastructure Management – "Work Order Data Entry." (Exhibit 118)

¹⁷⁴ See at *Id.*

¹⁷⁵ 30 September 2007 at 9:23, Sewer/Water Infrastructure Management – "Work Order Data Entry." (Exhibit 119)

SEVERAL CONS CALLED RE 1161 HYDRANT LATERAL, CONS ADVISE THAT AREA IS PRONE TO MUD SLIDES AND EARTH IS MOVING NOW DUE TO 1161.¹⁷⁶

Crabbe also sent an e-mail to Hawk to notify him that the fire hydrant on the street was leaking:

Rob,
The fire hydrant on Desert View at 5734 Desert View is flowing water from under the concrete base of the hydrant. The neighbors reported it leaking yesterday and it has gotten much worse today. It is seeping into the cracks in the street and into yards. We reported it to the emergency services number today and through that you should be notified.¹⁷⁷

City crews failed to show up to repair the hydrant and Crabbe sent another e-mail to Hawk later that day to alert him that the fire hydrant continued to leak. Crabbe stated in a 30 September 2007 e-mail:

Rob,
The hydrant [sic] is still leaking it is soaking the ground please have it turned off as soon as possible. One night of leaking at this rate the hill will be gone.
Help
Tom¹⁷⁸

Hawk responded to Crabbe more three hours later to inquire if the hydrant was still leaking. Hawk also requested that Crabbe provide the phone numbers of neighbors.¹⁷⁹ After responding to Crabbe, Hawk sent an e-mail to City officials who had been involved with the Soledad issues and noted that the leak had been called in three times and it had not been responded to. Hawk wrote:

¹⁷⁶ See at *Id.*

¹⁷⁷ 30 September 2007, 1:03 p.m., e-mail from Tom Crabbe, resident of Soledad Mountain Road, to Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department. (Exhibit 120)

¹⁷⁸ 30 September 2007 e-mail from Tom Crabbe, resident of Soledad Mountain Road, to Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department. (Exhibit 121)

¹⁷⁹ 30 September 2007 e-mail from Tom Crabbe, resident of Soledad Mountain Road, to Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department. Subject: "Re: Fwd: Re: Soledad Mountain road water line/letter to customers." Carbon copied: Jamal Batta, senior civil engineer for Engineering and Capital Projects; and Stan Medina, construction program manager for the Water Department. (Exhibit 121)

This leak was called in at least 3 times, but the dispatcher said she notified the crews of the leak. The water supervisor called me at 8:05 and has sent someone out, and is going himself.¹⁸⁰

Hawk stated in the e-mail that he would travel to the site to investigate.

Meanwhile, another work order was issued by the City for the leak on Desert View Drive and Soledad Mountain Road at 7:45 p.m. The work order alerted the City crew:

PER CONSUMER HIS NAME IS TOM CRAB, AND PER ROBERT HAWK.. THIS AREA IS CONSIDERED EMERG...NEED 11-11 ASAP, HILL IS MOVING..HOUSES ARE CRACKING¹⁸¹

Hawk traveled to the site to investigate the condition of the road. He sent an e-mail to Oskoui and Ruhi:

Afshin/Hossein,
I visited Desert View Alley last night at approximately 8:30 and met the Utilities crew. Reportedly, several neighbors have called about this hydrant leaking throughout the weekend. Joyce Clark, from 5748 Desert View (alley) where the hydrant is located, told me she had called the hotline several times. The leak was coming out of the valve stem area of the water line, not the hydrant. The neighbors reported that a crew would show up, turn off the valve in the alley, and leave, but the leak continued. The entire hydrant and water line crossing in the alley, and other paved and unpaved areas are showing significant additional distress – mostly heave – when compared to the conditions on Friday afternoon, as is the pavement in several other locations in the alley...

Cursory examination of Soledad Mountain Road reveal several old cracks have widened since Friday, and new cracks have appeared since we sealed the existing cracks two weeks ago, so movement is ongoing.¹⁸²

¹⁸⁰ 30 September 2007, 8:10 p.m., e-mail from Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department, to Afshin Oskoui, deputy director of Engineering and Capital Projects; and Hossein Ruhi, deputy director of Engineering and Capital Projects. Subject: "Re: Fire Hydrant Leak on Desert View". Carbon copied: Carol Drummond, senior public information and media relations officer for the Engineering and Capital Projects Department; and Jamal Batta, senior civil engineer for Engineering and Capital Projects. (Exhibit 120)

¹⁸¹ 30 September 2007 at 19:45, Sewer/Water Infrastructure Management – "Work Order Data Entry." (Exhibit 119)

¹⁸² 30 September 2007 e-mail from Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department, to Hossein Ruhi, deputy director of Engineering and Capital Projects; Afshin Oskoui, deputy director of Engineering and Capital Projects; and David Jarrell, assistant deputy chief of Public Works. Subject: "Re: Fire Hydrant Leak on Desert View." Carbon copied: Carol Drummond, senior public information and media relations officer; Jamal Batta, senior civil engineer for

City crews continued to address the problems as they were reported to the City.

CITY TO RESIDENTS: “DON’T WORRY, THERE’S NO PROBLEM”

To deal with the deteriorating condition of the slope of Soledad Mountain Road and Desert View Drive, Hawk called an emergency meeting for 8 a.m. on 1 October 2007. City officials invited to the meeting included:

- Tim Bertch, director of Metro Wastewater
- Jaymie Bradford, director of council affairs for the Office of Mayor Jerry Sanders
- John Brown, assistant director of the General Services Department
- Jim Fisher, deputy director of the Water Department
- Richard Haas, deputy chief operating officer for Public Works
- Rob Hawk, senior engineering geologist for the City’s Engineering and Capital Projects Department
- David Jarrell, assistant deputy chief of Public Works
- Mark Mercer, deputy city attorney
- Afshin Oskoui, deputy director of Engineering and Capital Projects
- Ray Palmucci, deputy city attorney
- Hossein Ruhi, deputy director of Engineering and Capital Projects
- Alex Ruiz, assistant director of the Water Department
- Mario Sierra, director of the General Services Department
- Christopher Toth, deputy director of the Water Department
- Peter Yee, liability claims supervisor for the City’s Risk Management Department
- Hasan Yousef, public works superintendent for the General Services Department
- Thomas Zeleny, chief deputy city attorney¹⁸³

According to handwritten notes from the meeting, attendees were presented with information stating that there had been additional soil movement underground since July 2007 and that “water is critical, causing possibility of additional deep slip...”¹⁸⁴

Shortly after the meeting, Batta chastised Hunter for failing to post signs on Soledad Mountain Road to lower speed limits from 35 mph to 25 mph. Batta wrote:

Duncan:

Engineering and Capital Projects; Marnell Gibson, deputy director of Engineering and Capital Projects; Dave Zoumaras, deputy director of Engineering and Capital Projects; Stan Medina, construction program manager for the Water Department; and Jim Fisher, deputy director of the Water Department. (Exhibit 122)

¹⁸³ 1 October 2007 meeting alert from Rob Hawk, senior engineering geologist for the City’s Engineering and Capital Projects Department. Subject: “Soledad Mountain Road.” (Exhibit 123)

¹⁸⁴ Handwritten notes from 1 October 2007, Subject: “Soledad Mtn Rd Update.” (Exhibit 124)

I am getting lots of heat on this. We need to put signs to lower the speed limit to mph and also detour trucks from using the road. Hasan knows the urgency in case you need his help to move things fast over in the sign shop.

Another issue came up this morning regarding the bike lane as to its safety. I'll go to the site to see the width of the cracks in the bike lane so we may close it...

The most critical area is between 5735 to 5685 Soledad Mountain Road.¹⁸⁵

Hughes responded to Batta immediately and stated that the speed on the street could not be changed. Hughes stated:

We have issued work orders to Street Division for the installation of advisory speed signage and a truck prohibition and detour. Please be aware that the speed will not be enforceable, and neither will the truck prohibition.¹⁸⁶

A work order was issued by the City to send crews to Desert View Drive to address another leak. The description on the work order identified the problem as, "STREET...LIFTING ASPHALT."¹⁸⁷ The report issued to the City crew also stated, "CLAIMS IS NOT THE HYDRANT, AND IS HIGH PRIORITY...ST LEAK."¹⁸⁸

Another resident of Soledad Mountain Road wrote an e-mail to Hawk and Batta alerting them that the ground was saturated with water, the land had moved significantly, and questioning the safety of staying in the house. Tim Ventimiglia, resident of Soledad Mountain Road, stated:

Robert and Jamal,

My name is Tim Ventimiglia. My wife, Chere, and I live at 5785 Soledad Mountain Road. I am emailing you due to the tremendous concern I have for the issues that are occurring on my street.

My neighbor at 5703 Soledad Mountain Road, Mr. Tom Crabbe, has filled me in on the details of the water leaks, possible sewer leak(s), and landslide that is occurring down our street. I've talked with one of the San

¹⁸⁵ 1 October 2007, 11:14 a.m., e-mail from Jamal Batta, senior civil engineer for Engineering and Capital Projects, to Duncan Hughes, senior traffic engineer for Engineering and Capital Projects. Subject: "Soledad Mountain Road – Traffic Speed." Carbon copied: Hasan Yousef, public works superintendent for the General Services Department. (Exhibit 125)

¹⁸⁶ 1 October 2007, 11:24 a.m., e-mail from Duncan Hughes, senior traffic engineer for Engineering and Capital Projects, to Jamal Batta, senior civil engineer for Engineering and Capital Projects. (Exhibit 126)

¹⁸⁷ 1 October 2007, 11:36, Sewer/Water Infrastructure Management – "Work Order Data Entry." (Exhibit 127)

¹⁸⁸ See at *Id.*

Diego Gas & Electric employees today regarding the land movement, and he told me that the land has moved feet, not just inches!

I see the damage to the street and the homes down my street, the damage to the street below us (Desert View), and I see that there are many city employees working on these issues. However, I still am very concerned for my property, and I wonder I should be concerned for my life. The ground is saturated with water....

Also, my wife and I smelled a strong odor of sewer gas (wind was from the Northwest, not from the South where the city crews are working) many times within the last two weeks, and we wonder if there is a sewer leak North of where the city crews are working.

Last, I would like to be kept informed of what problems are found, and what measures are being implemented to address these problems. Hearing about these issues from my neighbor, I feel, is inadequate.¹⁸⁹

Meanwhile, a meeting was held in the Mayor's Office on 1 October 2007 to discuss "Soledad Mountain Road."¹⁹⁰ Mayor Jerry Sanders was in Washington D.C. at the time of this meeting. It is unclear from the e-mail who from the Mayor's staff attended this meeting.

Following the meeting in the Mayor's Office, Batta responded to Ventimiglia at 3:36 p.m. and notified him that City officials would be in the area at 4 p.m. "to share with them what we know."¹⁹¹

Another work order was issued by the City to repair a sunken patch of pavement that had been placed over an older repair. The description on the work order stated: "SUNKEN OLD PATCH AFTER 1161S REPAIRS."¹⁹²

¹⁸⁹ 1 October 2007, 1:10 p.m., e-mail from Tim Ventimiglia, resident of 5785 Soledad Mountain Road, to Jamal Batta, senior civil engineer for Engineering and Capital Projects; and Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department. (Exhibit 128)

¹⁹⁰ 1 October 2007 calendar notice of meeting for Jamal Batta, senior civil engineer for Engineering and Capital Projects, between 1 p.m. and 2 p.m. in the Mayor's office; Subject: "Soledad Mountain Road." (Exhibit 129)

¹⁹¹ 1 October 2007 e-mail from Jamal Batta, senior civil engineer for Engineering and Capital Projects, to Tim Ventimiglia, resident of 5785 Soledad Mountain Road; and Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department. Subject: "Re: Soledad Mountain Road Landslide." Carbon copied: Afshin Oskoui, deputy director of Engineering and Capital Projects; Alex Ruiz, assistant director of the Water Department; Christopher Toth, deputy director of the Water Department; Mario Sierra, director of the General Services Department; Richard Haas, deputy chief operating officer for Public Works; Council Member Kevin Faulconer; and Council President Scott Peters. (Exhibit 128)

¹⁹² 1 October 2007, 15:35, Sewer/Water Infrastructure Management – "Work Order Data Entry." (Exhibit 130)

Batta and Hawk visited the site on Soledad Mountain Road and Desert View Drive. Both men visited with residents and reported back to City officials. In an e-mail detailing the meeting, Batta stated:

I and Rob [Hawk] visited the impacted houses along Soledad Mtn Rd and the alley, about 20 houses. We had our 1 on 1 with each owner. The meetings went very well.¹⁹³

Hawk, meanwhile, took the responsibility of replying to Ventimiglia's e-mail and stated there was no problem. Hawk wrote:

Tim: I will be happy to meet with you this week. However, as we discussed briefly today, your property is out of the area of our immediate concern near Mr. Crabbe's home. I met with your neighbor Joeesph Tsai at 2701 Palomino Circle late last week. His house is next to you on the corner. I couldn't find anything on Mr. Tsai's property that was consistent with the age and construction of the subdivision. He noted some of the same issues, and we suggested that he contact a plumber. Have you had your plumbing checked by a licensed professional?¹⁹⁴

Meanwhile, Handal requested that he and Hawk attend a meeting with the contractor the morning of 2 October 2007 to discuss the problems. Hawk, however, could not attend the meeting because Fred Sainz, communications director for the Mayor, directed Hawk to attend a press conference instead. Hawk wrote:

I got tagged by Ron [sic] Sainz for a news conference; I have to meet Rich [Haas, deputy chief operating officer for Public Works] at 10, so that trumps your meeting.. Sorry I couldn't attend. Rob¹⁹⁵

The press conference was not related to Soledad Mountain Road.

¹⁹³ 1 October 2007, 8:55 p.m., e-mail from Jamal Batta, senior civil engineer for Engineering and Capital Projects, to Richard Haas, deputy chief operating officer for Public Works; David Jarrell, assistant deputy chief of Public Works; and Afshin Oskoui, deputy director of Engineering and Capital Projects. Subject: "Soledad Mtn Rd." Carbon copied: Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department. (Exhibit 128)

¹⁹⁴ 1 October 2007, 9:23 p.m., e-mail from Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department, to Tim Ventimiglia, resident of 5785 Soledad Mountain Road. Subject: "Re: Soledad Mountain Road Landslide." (Exhibit 131)

¹⁹⁵ 2 October 2007, 6:50 a.m., e-mail from Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department, to Michael Handal, associate engineer for Engineering and Capital Projects; and Jamal Batta, senior civil engineer for Engineering and Capital Projects. Subject: "Re: Meeting with contractor at 9:30 am on 10/2/2007, at 5725 SMR." (Exhibit 132)

CITY ISSUES WARNING

The morning of 2 October 2007, another sinking patch was reported on Soledad Mountain Road and a city work crew reported to fix the problem. The description on the work order stated: “SUNKEN PATCH AFTER 1161S REPAIRS.”¹⁹⁶

That same day, Jim Barrett wrote an e-mail that sought a repeated warning to City work crews that any leaks on the road must be repaired immediately:

FYI...please take the opportunity to stress (again) to our repair crews that we need to secure all/any leaks on Soledad as quickly as possible.¹⁹⁷

The City also started working on a letter to deliver to residents of Soledad Mountain Road. David Jarrell, assistant deputy chief of Public Works, notified the leadership of the Water Department:

As discussed, the homeowner meetings will be documented. The letters to the homeowners will be prepared for distribution today. Additionally, a meeting with the entire group will be scheduled next week to provide an update on the City's plans, timelines and progress-to-date.¹⁹⁸

The e-mail was sent to the executive leadership of the Mayor's Office, the executive staff of the Water Department, Engineering and Capital Projects Department, and two Deputy City Attorneys.

Meanwhile, the condition on Soledad Mountain Road continued to deteriorate, as evidenced by an e-mail that Hawk sent to representatives of SDG&E. Hawk wrote:

¹⁹⁶ 2 October 2007, 6:42, Sewer/Water Infrastructure Management – “Work Order Data Entry.” (Exhibit 133)

¹⁹⁷ 2 October 2007, 7:03 p.m., e-mail from Jim Barrett, director of the Water Department, to Jim Fisher, deputy director of the Water Department. Subject: “Fwd: Soledad Mtn Rd Update.” Carbon copied: Richard Haas, deputy chief operating officer for Public Works; Alex Ruiz, assistant director of the Water Department; and Stan Medina, construction program manager for the Water Department. (Exhibit 134)

¹⁹⁸ 2 October 2007, 7:49 a.m., e-mail from David Jarrell, assistant deputy chief of Public Works; to Bill Harris, deputy press secretary for the Mayor; Fred Sainz, communications director for Mayor Jerry Sanders; Greg Bych, director of Rick Management; Jay Goldstone, chief operating officer for the City of San Diego; Kris Michelle, policy director for Mayor Jerry Sanders; Phil Rath, police analyst for Mayor Jerry Sanders; Ray Palmucci, deputy city attorney; and Thomas Zeleny, chief deputy city attorney. Subject: “Fwd: Soledad Mtn Rd Update.” Carbon copied: Afshin Oskoui, deputy director of Engineering and Capital Projects; Christopher Toth, deputy director of the Water Department; Jamal Batta, senior civil engineer for Engineering and Capital Projects; Jim Barrett, director of the Water Department; Richard Haas, deputy chief operating officer for Public Works; and Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department. (Exhibit 135)

Cindy: we have had significantly more movement on Soledad Mountain. Could you have your staff evaluate the overhead again? Several residences have had concerns.¹⁹⁹

Hawk then forwarded an e-mail to the “Soledad Mountain Road Group” and Deputy City Attorney Tom Zeleny. Attached to Hawk’s e-mail was a PowerPoint representation included numerous photos of the area, including photos from the landslide that affected the areas in the 1960’s which destroyed numerous homes; satellite photographs showing the actual movement of the soil; and sequences of dated photos that illustrated the growth of cracks in the pavement, cracks in the foundations of residents’ homes, and the cracks showing separation of homes from the street.²⁰⁰

At this point, the City also chose to take the complaints of Ventimiglia more seriously. As discussed above, Batta and Hawk told Ventimiglia that his home was too far from the area of concern to warrant any action. Jim Fisher, deputy director of the Water Department, sent an e-mail to Johnny Mitchell, water system technician for the Water Department, which stated:

Johnny,
Here is the email regarding the potential leak on Soledad Mtn Rd. Please have it investigated ASAP to ensure that we are not contributing to the slide.²⁰¹

The City was now keeping an eye on every occurrence in the area seeking to avoid any liquid intrusion into the soil, which could set off the landslide.

Meanwhile, officials of the Risk Management, the Water Department and the City Attorney’s Office worked to draft a letter to the residents of Soledad Mountain Road and Desert View Drive. Hawk sent a draft of the document to David Jarrell at 8:45 a.m.²⁰² Hawk’s draft letter stated:

¹⁹⁹ 2 October 2007, 9:23 a.m., e-mail from Rob Hawk, senior engineering geologist for the City’s Engineering and Capital Projects Department; to Cindy Cecil, civil/structural engineering team lead for San Diego Gas & Electric. Subject: “RE: 5695-5725 Soledad Mountain Road.” Carbon copied: Jamal Batta, senior civil engineer for Engineering and Capital Projects; Michael Handal, associate engineer for Engineering and Capital Projects; Samuel Harris; and Dave Reistetter, senior engineer/project manager for Semptra Utilities. (Exhibit 136)

²⁰⁰ 2 October 2007, 9:51 a.m., e-mail from Rob Hawk, senior engineering geologist for the City’s Engineering and Capital Projects Department, to Soledad Mountain Road Group; and Tom Zeleny, deputy city attorney. Subject: “soledad Mtn overview.” (Exhibit 137)

²⁰¹ 2 October 2007, 9:57 a.m., e-mail from Jim Fisher, deputy director of the Water Department, to Johnny Mitchell, water system technician for the Water Department. Subject: “Fwd: Re: Soledad Mountain Road Landslide.” (Exhibit 138)

²⁰² 2 October 2007, 8:45 a.m., e-mail from Rob Hawk, senior engineering geologist for the City’s Engineering and Capital Projects Department, to David Jarrell, assistant deputy chief of Public Works. (Exhibit 139)

Dear Soledad Mountain Road Homeowner:

We have observed additional cracking in Soledad Mountain Road and Desert View Drive alley. Due to our concern with the stability of the hillside and safety of residents, the City of San Diego has hired a geotechnical consultant to examine the subsurface conditions in the area where the cracking has occurred. As part of this effort, the City will be declaring an emergency order to expedite any investigation and repair procedures deemed necessary for this effort. The declaration is for the purpose of streamlining the construction process, and not the result of any new threat to safety of residents. Public safety is our primary priority and City forces will be inspecting the area regularly for conditions considered hazardous. We will be arranging meetings with area residents to discuss the issue within a few days.

We appreciate your patience and cooperation during our activities in the area to protect the utilities, and investigate and identify the cause of the problem.²⁰³

Jarrell's e-mail, sent at 9:23 a.m., included the following changes to the document:²⁰⁴

Dear Mount Soledad Mountain Road Homeowner:

We have observed additional cracking in Soledad Mountain Road and Desert View Drive alley. ~~Due to our concern with the stability of the hillside and safety of residents~~ To assist us in assessing this situation, the City of San Diego has hired a geotechnical consultant to examine the subsurface condition in the are where the cracking has occurred.²⁰⁵

Jarrell, thereby, removed the only warning that residents were set to receive that their safety may be in danger. The letter quickly went through various changes throughout the

²⁰³ 2 October 2007, 8:45 a.m., e-mail from Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department, to David Jarrell, assistant deputy chief of Public Works. (Exhibit 139)

²⁰⁴ 2 October 2007, 9:23 a.m., e-mail from David Jarrell, assistant deputy chief of Public Works, to Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department. (Exhibit 139)

²⁰⁵ 2 October 2007, 1:48 p.m., e-mail from Thomas Zeleny, deputy city attorney, to Bill Harris, deputy press secretary for the Mayor; Greg Bych, director of Risk Management; Ray Palmucci, deputy city attorney; and Richard Haas, deputy chief operating officer for Public Works. Subject: "RE: Please review 'SoledadmtLetter2.' Carbon copied: Afshin Oskoui, deputy director of Engineering and Capital Projects; David Jarrell, assistant deputy chief of Public Works; Jamal Batta, senior civil engineer for Engineering and Capital Projects; and Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department. (Exhibit 139)

day by representatives of the Water Department and City Attorney's Office. Richard Haas, deputy chief operating officer for Public Works, sent an e-mail urging everyone involved to rush, as it would be delivered to residents that day.²⁰⁶ Haas wrote, "Please expedite your comments so that Rob can handcarry [sic] this afternoon to the residents."²⁰⁷ The final letter stated:

Dear Soledad Mountain Road and Desert View Drive Residents:

Subject: Soledad Mountain

We have observed increased cracking in Soledad Mountain Road and Desert View Drive alley. To assist us in assessing this situation, the City of San Diego has hired a geotechnical consultant to examine the subsurface conditions in this area. The consultant will be working in the City's right-of-way adjacent to your homes. Work will consist of installing inclinometers to determine the amount and limits of earth movement, and drill rigs taking soil samples and boring holes.

Public safety is the City's primary concern and City employees will continue to inspect the area frequently. The City intends to designate this work as an emergency project, as provided for in the Municipal Code. This designation will streamline the City's funding and contracting processes to expedite the investigative and potential repair procedures that may be necessary.

We will be arranging a meeting within a few days with area residents to provide an update on City plans and progress-to-date and to discuss this issues. We appreciate your patience and cooperation as we protect the utilities and investigate and identify the cause of the problem. We strongly encourage you to discontinue or minimize landscape irrigation until further notice.

During this time, please contact Carol Drummond at our hotline (619) 533-3872 if you have any questions. If you notice any service leaks, please immediately call our utility hotline at (619) 515-3525.

Sincerely,

Robert Hawk

²⁰⁶ 2 October 2007, 12:28 p.m., e-mail to Richard Haas, deputy chief operating officer for Public Works. (Exhibit 139)

²⁰⁷ 2 October 2007, 12:28 p.m., e-mail to Richard Haas, deputy chief operating officer for Public Works. (Exhibit 139)

Deputy City Engineer²⁰⁸

It is important to note that numerous residents of Soledad Mountain Road and Desert View Drive stated that they never received this letter from the City on 2 October 2007.²⁰⁹

While the City was preparing a letter to Soledad Mountain Road residents that contained no warning about the road condition, Hawk received an alarming call from a private geotechnical engineer, Robert Day of America Geotechnical. Day was hired by one of the homeowners. Hawk was told by Day that he was advising his client not to enter his home. Day also told Hawk that the City should “red tag” the building. Hawk relayed the message in an e-mail to Jim Fisher:

I received a call from Robert Day, of American Geotechnical who is reportedly working for the homeowner at 5725 Soledad Mountain Road. He advised me that he is recommending to his client that the house not be occupied, and that the City ‘Red Tag’ the building. I asked him to send me an email with his recommendations, but that the client should take his advice. With respect to the City Red Tag (No entry allowed) procedure, we will evaluate [sic] that during a site visit. Mr. Day is a cometant [sic] geotechnical engineer with whom I have worked on several litigations and a few development projects. [Emphasis added.]²¹⁰

The private engineer requested to speak with the City’s engineer:

[Robert Day, of American Geotechnical] also requested permission to discuss the conditions with our consultants. I replied that all geotechnical data would be available one the data has been reviewed and received, but direct communication & speculation by, & with our consultants was not authorized...²¹¹

Instead of ordering an evacuation of the homes in danger, Hawk organized a meeting at the residences for the morning of 3 October 2007.²¹² The meeting would be attended by a bevy of City personnel and engineers. Hawk wrote:

²⁰⁸ 2 October 2007 letter from Robert Hawk, deputy city engineer, to “Soledad Mountain Road and Desert View Drive Residents.” Subject: “Soledad Mountain” (Exhibit 140)

²⁰⁹ Transcript of City Attorney Michael Aguirre community meeting on 3 October 2007 at the La Jolla Recreation Center. (Exhibit 141)

²¹⁰ 2 October 2007, 9:30 a.m., e-mail from Rob Hawk, senior engineering geologist for the City’s Engineering and Capital Projects Department, to Jim Fisher, deputy director of the Water Department. (Exhibit 142)

²¹¹ See at *Id.*

²¹² 20 October 2007, 3:15 p.m., e-mail from Rob Hawk, senior engineering geologist for the City’s Engineering and Capital Projects Department, to William Barranon, a representative of the City’s Development Services Department; Hamid Irannejad, a representative of the City’s Development Services

This is an emergency that involves a landslide on Soledad Mountain Road. Can you arrange to have a combo inspector, a structural engineer, and anyone else you think necessary meet me tomorrow at 5725 about 8AM? We need to walk through 4-6 of these structures, and then develop a plan if the conditions worsen. Two are particularly problematic.

Please respond as soon as you can. I apologize for the delay but we are working to trying to up with a stabilization.²¹³

At some point, after the letter had been drafted and approved, City officials changed course and authored a far more drastic letter that advised residents of four homes on Soledad Mountain Road not to sleep in the structures. The letter, dated 2 October 2007, stated:

Residents of 5695, 5703, 5715 and 5725 Soledad Mountain Road

The geotechnical consultant retained by The City of San Diego regarding apparent soils instability in your neighborhood has advised us that you should not sleep in your homes effective immediately.

The City is sharing this information in advance of a comprehensive evaluation of the properties included in this notice that will take place on the morning of October 3, 2007...

You are under no obligation to take the recommendation of the consultant. We will continue to keep you apprised of developments to the situation.²¹⁴

The letters were delivered to residents at 7 p.m. on 2 October 2007.²¹⁵

Hawk also visited the homes on the evening of 2 October 2007 to hand deliver the message but was not successful in giving it to all homeowners. Hawk sent an e-mail to his superiors updating his progress:

Department Subject: "soledad mtn road structure evaluations." Carbon copied: Afsaneh Ahmadi, a representative of the City's Development Services Department; Richard Haas, deputy chief operating officer for Public Works; Afshin Oskoui, deputy director of Engineering and Capital Projects; and Hossein Ruhi, deputy director of Engineering and Capital Projects. (Exhibit 143)

²¹³ See at *Id.*

²¹⁴ 2 October 2007 letter from Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department, to "Resident of 5695, 5703, 5715 and 5725 Soledad Mountain Road." (Exhibit 144)

²¹⁵ 2 October 2007, 10:18 p.m., e-mail from Jamal Batta, senior civil engineer for Engineering and Capital Projects, to Afshin Oskoui, deputy director of Engineering and Capital Projects. (Exhibit 145)

I delivered 3 of 4 warning letters to the occupants personally. The family at 5715 Soledad Mtn. Rd. wasn't home, but I left voicemail on their contact telephone with my cell phone number, and placed the letter on the mailbox.²¹⁶

At this point, residents of at least three of the homes were in receipt of the letter.

THE LANDSLIDE

On the morning of 3 October 2007, a work order was issued by the City to fix another leak on Desert View Drive. The description of the problem in the work order stated, "STREET...LIFTING ASPHALT."²¹⁷ The City crew that responded to the work order entered the following description of the scene, "RECALLED BY JOYCE, CLMS STILL LEAKING, & GROUND MOVING."²¹⁸ The project was turned over to Rob Hawk at 7:23 a.m.²¹⁹

Tom Crabbe, resident of Soledad Mountain Road, sent another e-mail and some pictures to Hawk describing the problem at 7:59 a.m. Crabbe stated:

Rob,
There is water flowing down the gutter into the open cracks in the street. I thought you should know. Here are some pictures.
Tom²²⁰

The leak reported by Crabbe was the same leak that he reported. Alton McCormick, a resident of affected area, stated of the leaking hydrant, "I watched it for four days."²²¹

²¹⁶ 2 October 2007 e-mail from Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department, to Afshin Oskoui, deputy director of Engineering and Capital Projects; David Jarrell, assistant deputy chief of Public Works; Jamal Batta, senior civil engineer for Engineering and Capital Projects; and Richard Haas, deputy chief operating officer for Public Works. Subject: "Re: Soledad Mtn rd – Letter to Residents." (Exhibit 145)

²¹⁷ 3 October 2007, 7:11, Sewer/Water Infrastructure Management – "Work Order Data Entry." (Exhibit 146)

²¹⁸ See at *Id.*

²¹⁹ 3 October 2007, 7:23, Sewer/Water Infrastructure Management – "Work Order Data Entry." (Exhibit 146)

²²⁰ 3 October 2007, 7:59 a.m., e-mail from Tom Crabbe, resident of Soledad Mountain Road, to Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department. (Exhibit 147)

²²¹ Sauer, Mark; "Hillside on Mount Soledad fails; 55 homes evacuated;" *San Diego Union-Tribune*; 4 October 2007. (Exhibit 148)

Ross Clark, a resident of 5748 Desert View Drive, also spoke to the media about the fire hydrant. The media report stated:

Ross Clark...focused his anger on the fire hydrant that had been spewing water from Friday until Monday. He's convinced the nonstop flooding destabilized the hillside.

'Look at that!' Clark said, pointing to a cell-phone photo he took several days ago. 'That's water and mud coming out of the fire hydrant for 4 ½ days. The ground was soaked. We were calling, calling, calling and they never fixed it.'²²²

The situation continued to deteriorate on Soledad Mountain Road. A crew that had been at the Mount Soledad site that morning, wrote at 9:03 a.m.: "NOTE: THIS IS WHERE LAND IS SINKING NEED CREWS ASAP."²²³ In response, the City issued another work order at 9:04 a.m. directing crews to "PLS ASAP SEND CREW TO PULL WATER LINES & HYDRANT".²²⁴ Highlighting the magnitude of the problem, the same work order language was sent again at 9:14 a.m.,²²⁵ at 9:24 a.m.,²²⁶ and 9:29 a.m.²²⁷

Eyewitness accounts and media reports of the slides stated that the hill began to slide at 9 a.m.²²⁸ Ross Clark, resident of 5748 Desert View Drive, stated that he was standing in front of his house when the hillside began. Clark told a reporter:

Pine cones were falling off the trees all at once...The dogs were howling. The birds were going crazy. The ground started moving under our feet. There was a city engineer. He started yelling, 'Run, run',²²⁹

²²² Roth, Alex; "For homeowners on hillside, grim realities begin setting in"; *San Diego Union-Tribune*; 5 October 2007. (Exhibit 149)

²²³ 3 October 2007, 9:04, Sewer/Water Infrastructure Management – "Work Order Data Entry." (Exhibit 150)

²²⁴ See at *Id.*

²²⁵ 3 October 2007, 9:14, Sewer/Water Infrastructure Management – "Work Order Data Entry." (Exhibit 151)

²²⁶ 3 October 2007, 9:24, Sewer/Water Infrastructure Management – "Work Order Data Entry." (Exhibit 152)

²²⁷ 3 October 2007, 9:29, Sewer/Water Infrastructure Management – "Work Order Data Entry." (Exhibit 153)

²²⁸ Sauer, Mark; "Hillside on Mount Soledad fails; 55 homes evacuated;" *San Diego Union-Tribune*; 4 October 2007. (Exhibit 148)

²²⁹ See at *Id.*

Clark continued:

We saw a mountain coming down. It was rock, dirt, trees, road. It was 20 feet high. It was like a tidal wave. It crushed the house next to us. It crushed our wall that surrounds our pool.²³⁰

Joyce Clark, also the resident of 5748 Desert View Drive and wife of Ross Clark, added:

We ran back in the house, grabbed our dogs, grabbed our son and drove. I have zero clothes.²³¹

Other residents' stories are equally alarming. Ali Afshar, a Soledad Mountain Road resident, spoke with the reporter who wrote:

[Afshar's] shower was interrupted Wednesday morning by a knock on his door. City officials had come to inform him that the hillside was in danger of collapsing any minute. Naked except for a towel wrapped around his waist, Afashr asked for a half-hour to collect some belongings.

'No, you have one minute,' they responded. 'Get out.'

He threw on some clothes and did as he was told.²³²

Meanwhile, the City's engineer hired to perform tests on the hillside, Helenschmidt Geotechnical, were on site on their first of day on their project when the hillside began to slide. The firm had started to drill holes in the ground to execute the study.²³³ Rupert Adams, supervising geologist for the firm, told a reporter: "It moved a humungous amount, in the order of tens of feet...Fortunately we were able to pull out."²³⁴

Interestingly, while emergency crews were still on Soledad Mountain Road monitoring the land slide for additional movement, Jim Barrett, director of the Water Department, took time to search through his e-mail, calendar, and meeting notes to see when representatives of the City Attorney's Office had become involved in the issue. Barrett sent an e-mail to Richard Haas, at 11:17 p.m. that stated:

²³⁰ See at *Id.*

²³¹ See at *Id.*

²³² Roth, Alex; "For homeowners on hillside, grim realities begin setting in"; *San Diego Union-Tribune*; 5 October 2007. (Exhibit 149)

²³³ See at *Id.*

²³⁴ See at *Id.*

Rich – I looked through all of my archived email and the earliest email I could find that involved Palmucci was one from Rob on 8/16 indicating he would forward an email to Palmucci (attached)...after that, the next one is one I think you already have (9/14, also attached).

For meeting, the first I could find was 8/15 at 1130 that included Tom Zeleny (but I don't think he actually showed...I believe it was Palmucci and Mercer). Then I show one at 1000 on Monday, 9/17 that included Palmucci. And Finally, we had one this week, 0800, Monday, 10/1.²³⁵

At this point, Haas was now in possession of all communications that Barrett had with representatives of the City Attorney's Office.

COMMENTS AT THE SITE

On 3 October 2007, three deputy city attorneys were scheduled to be on Soledad Mountain Road to monitor developments with City staff. These attorneys arrived immediately after the slide occurred. Chief Deputy City Attorney Tom Zeleny phoned the City Attorney moments after the slide occurred. Zeleny briefed the City Attorney and advised that the situation had not stabilized. Zeleny requested that the City Attorney come to the site.

City Attorney Michael Aguirre left the City Attorney's office in downtown San Diego for Mount Soledad shortly after 9:30 a.m. The City Attorney was the first elected City official to arrive at Soledad Mountain Road on the morning the slide began on 3 October 2007. After surveying the damaged homes and the landslide, Aguirre provided reporters information regarding the movement of the soil. Up to this point – more than 40 minutes after the start of the large dirt migration – residents of the City of San Diego and viewers of the national television media had no information from City of San Diego officials.

During the 10:29 a.m. news conference, Aguirre alerted the news media that City water crews had recently been on site working in the area.

Three weeks ago there was an incident up here in which water department and water crews began to work in and around the area that, in which there has been this slide. We have geologists that are looking at the situation right now, assessing exactly what damage has occurred and what additional damage is likely to occur.

²³⁵ 3 October 2007, 11:17 p.m., e-mail from Jim Barrett, director of the Water Department, to Richard Haas, deputy chief operating officer for Public Works. Subject: "ATORNEY INVOLVEMENT ON SOLEDAD". Carbon copied: Rob Hawk, senior engineering geologist for the City's Engineering and Capital Projects Department. (Exhibit 154)

The City Attorney stated that the problem had been contained, the residents evacuated and therefore there was no safety threat.

We don't believe that there's an immediate threat to the safety and health of any other residents. SDG&E is here, and they're taking control of the power lines and shutting down the power. They're in the process of doing that. They've done that to some. Not all the power has left the cables yet. So there's still a high risk area with regard to that. The gas is being shut off. Although, there is still some gas leakage in the area. But the gas is being shut off...

The real issue, though, is that it doesn't appear to be any additional cracking, at least at this point. This is a dynamic situation, so we're not able to say for certain that it won't become more of a problem. But we are, obviously, actively on top of it. As soon as we receive any additional information, that information will be provided to you on an ongoing basis.

We're trying to, from the city's perspective, we're trying to play a little catch-up here with the mayor being gone and the mayor's staff, I think, is trying to get over here. But as I said, we have plenty of people here. There's no immediate danger to anyone else. All parties have been evacuated. Whatever ongoing danger there is, is being assessed and reduced from the gas and electricity sources and that's where we are.²³⁶

The City Attorney added that he had spoken to residents on Soledad Mountain Road, who stated that City water crews were in the area recently to repair water leaks. Aguirre stated:

Three weeks ago, approximately, there was some incident up here. The work crews have been here working. I've been told this by the residents. I'm passing on that information. Whatever information I receive, I will make sure that that information is passed on to you, so that you have all the information I do.

The nature of the work was water repair. There appeared to be some leakage in some of the pipes. One of the sources of information has told us that there were, there was piping that was run into some of the homes. So, as I said, this is not a new problem for this area. So we know that. We know that there have been similar situations earlier, much earlier. In fact, we can provide and will provide you pictures of similar situations that took place in the 1960s.

So as I say, you know, give us a chance to get caught up here, and I know that the mayor's office will be providing information to you, that Mr.

²³⁶ Transcript of City Attorney Michael Aguirre news conference at 10:28 a.m. as broadcast on KUSI. (Exhibit 155)

Goldstone will be here shortly. But I have, as I said, numerous city investigators are out, gathering information. The moment anything material or important we can add to the story for you, we'll provide that. And if you have any questions for us, if you provide those to us, we'll try to run that down until we get the city's position firmly stabilized.

The city has had to purchase land from homeowners based on similar problems...²³⁷

Reporters then shifted focus to the historical problems with soil movements on Soledad Mountain Road and how these issues were handled by the City. Aguirre stated at the 10:29 a.m. news conference:

The city has had to purchase land from homeowners based on similar problems that we have in the past, in this are, yes. Well, in the 1960s there was a serious cave in, in the 1960s. I've seen pictures of that and it was much worse than what we are seeing here. But, as you might recall, there was, shortly after Mayor Sanders was elected, there was a house that we had to take over. Because of a similar problem, we have had to purchase four or five homes.²³⁸

It is important to stress that, while referencing the landslide in the 1960s to provide a historical context, Aguirre neither stated nor implied that the City would have to purchase the homes damaged in the geological phenomena that occurred on 3 October 2007. Aguirre stated that there were City crews working on this area of Soledad

Aguirre also addressed the reason for the presence of the heavy machinery on the street at a 10:29 a.m. news conference:

The drilling rigs are being used to look to see if there are any additional problems and to be on standby to see if there is any need for re-enforcement or anything of that sort. As I said, they are going to be organizing and staging whatever possible equipment we are going to need to see if we can actively manage the situation.²³⁹

Aguirre concluded:

I really don't have anything else important that I can tell you. I know that Mr. Goldstone is on his way. And we will keep you all as informed as we can.²⁴⁰

²³⁷ See at *Id.*

²³⁸ See at *Id.*

²³⁹ See at *Id.*

²⁴⁰ See at *Id.*

Aguirre made no comments in the interview that alleged that the water caused the landslide or that the City would be responsible for purchasing the homes.

Immediately after Aguirre concluded his comments to the news media, Fred Sainz, spokesman for Mayor Jerry Sanders, appeared before the media to provide information that had nothing to do with the disaster:

I just heard a station say the because the Mayor was out of town, Mr. Aguirre was representing the City. That is inaccurate. The Mayor is in Washington D.C. Jay Goldstone will be representing the Mayor. The Mayor will be getting off a plane this afternoon and coming directly to the site.²⁴¹

The City's Chief Operating Office, Jay Goldstone, held a news conference shortly after Sainz's statement on the morning of 3 October 2007 at 10:29 a.m. Goldstone stated:

The Mayor is in Washington D.C. on City business and will return this evening and I believe will be meeting with you. We have been in contact with him on multiple occasions this morning and have provided him with updated information and he had provided us with direction.

I want to begin by assuring all residents affected that the City is doing everything possible to stabilize the situation and safeguard their homes. We share their concerns and want them to know that we will work around the clock to do everything we possibly can.

The City has acted quickly and responsibly since this matter came to our attention. We have distributed a fact sheet with the history of this issue. This is a very quickly evolving situation.²⁴²

Goldstone then shifted focus to the landslide itself:

The reasons for the rapid movement of the soil are not fully known as of this moment other than that gravity is pulling the soil down the hill. There is no evidence that the City's utility – such as water or wastewater – has contributed to the situation.

Goldstone continued:

²⁴¹ Transcript of Fred Sainz, spokesman for Mayor Jerry Sanders, on 3 October 2007. (Exhibit 156)

²⁴² Transcript of Jay Goldstone, chief operating officer for the City of San Diego, new conference on 3 October 2007. (Exhibit 157)

Using his emergency contracting powers, the mayor has authorized us to hire a geotechnical firm to advise us on the situation. Yesterday, the firm commenced its work on the site and found that the soil movement has accelerated quickly.

We are here this morning, have invited you, to bring you up to date on the conditions that stretch along Soledad Mountain Road, Desert View Alley and roadway below us.²⁴³

Standing in front of the sinkhole on Soledad Mountain Road, Goldstone alerted the news media that soil movement occurred on Soledad Mountain Road. Goldstone stated:

This morning, the City has determined that the soil movement in this area has accelerated. City staff will be working with our consultant to determine the range or our options for stabilizing the soil in this area.²⁴⁴

Goldstone added:

Our office has been in contact with Congressman Bilbray's office this morning and will do everything possible to obtain federal assistance including declaring a state of emergency, if appropriate. We are also working with CalTrans.

Rob [Hawk] will be going into greater detail as to what has been happening over the past few days and what to expect.

I want to end by expressing our concern for the family's affected by this and assure them – and all residents – that we will be working to do everything possible to safeguard the situation.²⁴⁵

Goldstone also told reporters that “it was ‘extremely premature’ to talk about whether the city will purchase houses in the neighborhood because of the slide.”²⁴⁶

Aguirre was interviewed by reporters later in the day at a 11:33 a.m. Aguirre stated:

The geologist has told me that he is still concerned that there could be additional movement and that what we are worried about it is that the toe

²⁴³ See at *Id.*

²⁴⁴ See at *Id.*

²⁴⁵ See at *Id.*

²⁴⁶ Kucher, Karen; Sauer, Mark; and Barfield, Chet; “One La Jolla home destroyed, several damaged in Mt. Soledad slide”; *San Diego Union-Tribune*; 3 October 2007. (Exhibit 158)

of the slide could proceed further to the east and further threaten the homes that are bellow.

So, the precaution to stop that is to take the landfill and the earth above the slide area that continues to press down, and remove that. That will be happening tomorrow and they will be restoring a 45 degree angle on the slope so that threat will be removed.

Right now, until we do that, the situation remains active, remains unstable, and no one can tell us exactly if there is going to be additional movement.²⁴⁷

In response to this statement, a reporter asked, “Is this definitely a landslide? Or, a movement in the earth, maybe not a landslide, maybe a giant pit that opened up?” Aguirre responded that no conclusions had been reached:

It was definitely a geological movement. What he explained to me is that there are sheered off clay plates. And that those plates are like a stack of cards and they tilt slightly to the east and for whatever reason there was movement about 60 feet below.²⁴⁸

A reporter then specifically asked Aguirre if the ground movement on Soledad Mountain Road was caused by a water leak. The reporter asked: “What? By ground water leakage?” Aguirre replied:

Well, no. We don’t have any evidence that is definitive at this point. I think we have to be cautious about what we attribute it to. But, all we know is that these clay plates are sheered off through years of tectonic movement and that they are pointed downward and to the east. And that about 60 feet below ground, according to geologist, there was movement and thus the slide.

It began to move at a rapid pace this morning at about 9 a.m.²⁴⁹

The reporters then focused questions on the water crews that had been working on Soledad Mountain Road over the course of months. Two reporters asked:

REPORTER 1: Any idea, was there anything that could have tipped this off that this was happening? I mean, there were people out here yesterday and again this morning.

²⁴⁷ Transcript of 11:30 a.m. news conference as broadcast on Channel 10 News. (Exhibit 159)

²⁴⁸ See at *Id.*

²⁴⁹ See at *Id.*

REPORTER 2: About three weeks ago, crews were out here and the City came back later and said that they could say with certainty that wasn't the cause²⁵⁰.

Aguirre replied:

I think that the point is, right now, no one can say anything with certainty. Except to say that we know that three weeks ago that our crews were out here, that they noticed that there was movement at that time, that there was activity out here.

The exact nature and extent of that activity, exactly, who was here and what was going on, we have investigators now back at the City pulling all of the documents out of the Water Department to find out what was going on.

So, we will be able to give that information to you. And I do think it's correct, we want to move with this, as I said before, step-by-step and not get ahead of ourselves.

As we get information, we are going to provide it to you. And it is true that our crews were out here three weeks ago.²⁵¹

The City Attorney made no comments during the course of this news broadcast that could be construed as potentially creating liability or endangering the City's insurance. No comments were made by Aguirre concluding the cause, whether the event was actually a landslide, or if the City would be responsible for paying for any of the damage. Aguirre specifically stated that no conclusions should be made about what caused the soil movement, that any conclusion would take time to reach, and that an investigation would be undertaken.

A breaking news media report was issued on the afternoon of 3 October 2007 that featured a mayoral spokesperson who made claims that the City Attorney made false statements. The report stated:

A mayoral spokesman said earlier that City Attorney Michael Aguirre gave out false information in midmorning comments to reporters. The spokesman said Aguirre had not had any contact with sewer, water, or engineering officials before he discussed the situation with reporters.²⁵²

²⁵⁰ See at *Id.*

²⁵¹ See at *Id.*

²⁵² Kucher, Karen; Sauer, Mark; and Barfield, Chet; "One La Jolla home destroyed, several damaged in Mt. Soledad slide"; *San Diego Union-Tribune*; 3 October 2007. (Exhibit 158)

It is worth clarifying that all of Aguirre's comments are factually accurate. It is also worth pointing out that Aguirre specifically stated that he spoke with residents, not City employees.

A media report reported the Mayor's comments which were made after he arrived at the scene of the landslide on 3 October 2007 at 10:00 p.m. The Mayor stated:

Let there be no doubt from the moment the city was aware of this problem, we've taken every step to address it.²⁵³

The next day, the Mayor's Office immediately denied that the City had any responsibility for the soil movement that occurred on Soledad Mountain Road. In a 4 October 2007 media report, a spokesman for the Mayor's Office stated:

'There's nothing that indicated anything other than a natural geological activity,' said Bill Harris, a spokesman for Mayor Jerry Sanders.²⁵⁴

The Mayor's Office maintained that the City addressed the situation in a responsible and timely manner.

COMMUNITY FORUM

Meanwhile, the night of the soil dislodgement on Soledad Mountain Road, the City Attorney held a public forum at the Bishop's School in La Jolla, to listen to the concerns of the residents of the area. Residents at the event voiced frustration that water mains on the street had broken repeatedly, had soaked the ground in front of their homes, and that City crews took as many as four days to fix the leaks. In response to one resident of the Mount Soledad area, Aguirre engaged in a back-and-forth exchange:

Aguirre: The more I can understand precisely the better for everybody, okay. So, in other words, let's not fudge, and I'm not saying anybody is because this is very helpful, but what I'm concerned about is exactly who reported it and how you reported it to the City. It sounds like City may have confirmed that, what's your name, sir?...Mike McCormick, okay. So, Mr. McCormick, what you're telling me that someone from the City, Mr. Hawk, from the City told you that there were four water main breaks and now we seem...

²⁵³ Braun, Gerry; "Aguirre's landslide strategy in question;" *San Diego Union-Tribune*; 7 October 2007. (Exhibit 160)

²⁵⁴ See at *Id.*

Man 1: Mr. Hawk, you know we told you that our fire hydrant leaked for about four days, various people they would send out would stare at the water leaking and would also tell us, it's been leaking in the street.

Aguirre: Alright, so then what you're telling me is that you saw the water hydrant, fire hydrant, are you telling me that you saw that leaking on Mr. Soledad as well?

Man 1: I saw the main water main when they were fixing, the water they had going up there, but I saw...

Aguirre: Whoa, whoa, whoa, you saw them fixing the water main on Mt. Soledad.

Man 1: Yeah.

Aguirre: When? ... Okay, I'm hearing two weeks ago, is that right?

Voices: Approximately...for months those trucks had been there.²⁵⁵

The conversation turned to focus on a fire hydrant that, as discussed above in this report, has leaked for a series of days:

Seymour: Well, my main concerns is that I saw, we took our dog for a walk on Saturday morning and I saw water hydrant on Desert View Drive was leaking bad, so much that the whole pavement was getting out of shape. I knocked on my friend's, neighbor's door and wife told them, "Have you contacted the City people to come and fix this leak?" And she said, 'Yeah, they've been here but it's leaking again.' And then it kept on leaking.

Aguirre: That as on Saturday morning?

Seymour: Saturday morning yeah.

Man 2: It wasn't actually leaking on the surface, it was leaking underneath the street.

Aguirre: Do we think, Seymour, that what happened is that the earth had already started moving at that point and that was what we were seeing?

²⁵⁵

Transcript of 3 October 2007 town hall meeting at La Jolla Recreation Center. (Exhibit 141)

Man 2: I think the earth moved because of the water.

Aguirre: No, no, but what I'm saying is, is what we're saying that the water occurred on the top originally, there was water leakage then eventually that may have cause the earth to move which in turn caused more leaking from ... is that what we're thinking here?

Man 3: That's exactly what happened to the house at 5228, the back hill went down, the water poured in, man made at the top of the hill.²⁵⁶

Again, in questions posed to residents, Aguirre in no way jeopardized the position of the City in discussion of culpability for the slide. Aguirre did not conclude that the water caused the slide or that it was the City's fault.

Another resident, a homeowner on Deseret View Drive, which lies under the portion of the land that slid, discussed her experience:

Lady 2: We are at 5734, we just moved in, in the end of June and when we moved in the street in front of our house was flat and since then it was literally just pushing up, we had called the City and in the past weeks...

Aguirre: When did you notice that it started lifting up?

Lady 2: Probably August, maybe.

Aguirre: In August.

Lady 2: It was not safe so they graded the whole thing on the 20th and since then it has been changing daily and they have all told us that it was the dirt coming up, we are at the toe of the slide, this all the City.

Aguirre: Okay, let me ask you this: Okay, you are on Desert View?

Lady: Yes.

Aguirre: Okay, today I was at the toe, is that your house?

Lady 2: That's my house.

²⁵⁶

See at *Id.*

Aguirre: That's your house?

Lady 2: Yes.

Aguirre: Right there. The really beauty, the sort of silver color or gray color.

Lady 2: With the green trim, yeah that's my house, with all the dirt.

Aguirre: Yeah, yeah, and it's right in your house.

Lady 2: Yes.

Aguirre: I'm really sorry that happened. That's a bunch of crap. You know that. That's not right.

Man: The good news is, it happened while she was taking the kids to school.²⁵⁷

The comments made by the City Attorney at the meeting contain no statements that jeopardize the City's insurance by assigning culpability.

A resident of a different portion of Mount Soledad stepped forward at the meeting and asked Aguirre if the purpose of the meeting was to, in effect, depose the residents of homes that had been either damaged or destroyed.²⁵⁸ Aguirre responded:

Aguirre: No, but what I'm doing, this is what I'm doing, okay. What I'm trying to do is, I'm trying to understand what the truth is, okay. There's a lot of different people who have lots of different ways of operating. I've been an attorney for 30 years, okay. I'm sick and tired of all the game playing and that's something we're not going to do on this. We're not going to play games with this. This lady has lost a house that she just moved into in June. You folks, how long have you lived in your house?

Lady 3: Thirty years.

Aguirre: Thirty years, okay. Are you citizens of San Diego? Okay, okay, my job is to represent you too.

²⁵⁷ See at *Id.*

²⁵⁸ See at *Id.*

Man: Good.

Aguirre: I don't represent you in terms of your case, you'll have to get your own private lawyers and all that stuff. But, I'm not going to be part of a cover up. I'm not going to be part of any dishonesty. I want to find out what happened. I think we've made more progress here in the last 30 minutes than I have all day listening to all the experts from the City talk to me.²⁵⁹

Residents at the meeting also produced a copy of the 19 September 2007 letter that alerted that a geotechnical firm had been contracted to study the leaks.²⁶⁰

Residents at the meeting began to ask more pointed questions and sought answers about whether water leakage from underground pipes caused the slide. Aguirre provided no conclusive answers:

Seymour: The City was trying to say this land movement....

Aguirre: No, no, you guys listen to me. Okay, let me explain something to you: We're here tonight to talk about what we learned tonight. We're not talking about something that happened outside of this, okay.

Seymour: We know what happened.

Aguirre: No, but hold on, Seymour, we're trying to piece it together. We've made some progress. Let's see if we can keep going, okay? Anything else?

Ben: As you can see, the issue of the water leakage dates back to September. Last Saturday this fire hydrant on Desert View Drive...

Aguirre: Okay, speak up nice and loud.

Ben: The fire hydrant on Desert View Drive, last Saturday morning, was leaking from the top... Top leakage is okay, but it was leaking from the very foundation, from the pipe going underneath it. That means it was subterranean leakage going up way underneath the soil and the thing that really pissed me off is that nobody told us not to sleep in

²⁵⁹ See art *Id.*

²⁶⁰ See at *Id.*

our house last night. My kids drove by there just 15 minutes before the whole thing came down. I'm not really happy about this.

Aguirre: I don't blame you for not being happy about it and I just thank God, our supreme being, or whatever it is, that your kids weren't hurt.

Ben: Thank you very much.²⁶¹

It is worth noting, that despite the comments about the fire hydrant, Aguirre again made no comments that could be construed as assigning culpability or jeopardizing the insurance of the City.

Another resident of the street complained that soil movements on the street were not a new problem and described his contact with the City.

Aguirre: Okay, who hasn't had a chance that wants to come up and talk next? Alright, come on up here. Project nice and loud for us, okay? Tom [Zeleny] is with me, a lawyer in my office. He's been doing a lot of water work for us for a long time. Okay, go ahead.

Man 4: I'd simply like to say that this is not been a new problem with the City of San Diego and Desert View Drive. Over the past several years there've been many problems in this street. We've had multiple potholes and cracks in the street and when we call the City they come in with remedial little things. The last time I called the man said to me, 'This street is a disaster.' Sire the problems are underneath. We have heard word of mouth that there has been a leak from Coral Reef Reservoir that was underground and that was what was causing it, coming across Soledad Mountain Road. All of these things we've been told when we complain and then they push us aside. They come and they put a little slurry on the street and say the problem is okay.

Aguirre: Okay, I think that part you've established. Okay, anything else?

Man 4: No.²⁶²

²⁶¹ See at *Id.*

²⁶² See at *Id.*

Again, Aguirre in no way made comments that assign culpability for the geological phenomenon to the City of San Diego.

In one of the longer conversations, a resident came forward to discuss the reason that the City raised the water lines from beneath the ground to street level.

Man 5: They disconnected the lines from underground to prevent further damage in their opinion that was due to the leakages from the pipes. So they...

Aguirre: So, is that what you think happened, is that they shut off the pipes in order to keep the water from leaking more and then they literally, what that what happened?

Man 5: It was my understanding that they ran the water lines in the street to get them out from under the ground because they were concerned about the movement.

Aguirre: No, no, no...

Man 5: Yes, yes, yes...

Aguirre: Not about the movement, were they concerned about, that there was leaking coming out of the pipes underground.

Man 5: There were leaks and they went out and fixed them and they kept happening. It's my understanding that's why they got them out from underneath the ground.

Aguirre: What, because they couldn't stop the leaks?

Man 5: Because they kept happening.

Aguirre: Alright, so what they did then was they, they couldn't, what we're hearing, we don't know think for sure, but what we're hearing is that there was some kind of leakage and they thought if they shut off the pipes, now there's, we need to take what is essentially the information here and then we're going to go back and find out and ask people questions and on our Web site tomorrow, we're going to start a Soledad Mountain Water Crisis portal and we'll put on there whatever we find, we're going to put on there. Okay, and I'm going to eventually issue an interim report on this, but go ahead.²⁶³

²⁶³

See at *Id.*

Throughout this conversation with an agitated resident of the area on Mount Soledad impacted by the landslide, Aguirre made no comments that could affect the City's liability in future litigation.

Another resident stepped forward to express concerns about the safety issues and inquire why residents were not warned.

Man 6: My question to you is the following: As a citizen, do you consider if they had gone so much as taking the expense of putting high water lines, when I arrived at my residents at 6 p.m. after work, or closer to 7 p.m., it just so happened that one of the City officials, the engineer that wrote this letter, happened to be driving by. He stopped and introduced himself. Him and I go to my residence, there was water gushing out of the water meter at my residence. The one they had just 20 hours prior connected it, which took an additional hour and fifteen minutes before the crew arrived to correct that. The negligence that I have seen in the quality of workmanship that the crew had performed in trying to maintain control of what they believed to be water leakage and/or breakage of the pipes and/or slippage of the earth has been...

Aguirre: I'm not sure. I'm not sure. Let me just say this: I'm not sure that there's not other people that are responsible, if it as you described. It may be that the workers were doing everything they could but they were trying to deal with a situation that needed a more fundamental repair, that may be it as well. Let me just say this, what you are describing to me makes me very mad, okay. And I'm trying to really hold my temper right now because what I'm hearing makes me very, very upset that a city would allegedly engage in such behavior. That is not, that is not, the City owes everybody better than that and we're going to get to the bottom of that and that's way I say the covering up, the spin, pushing it off on somebody else. Now I think everyone here has to acknowledge that this is an area that everybody knew was a difficult area and if you don't acknowledge that then...I'm asking you to be as truthful with me as I am being with you.

Man 6: I didn't know that. I just moved there.

Aguirre: Okay, you didn't know that, that's fine. But the point is that this area has been a troubled area. But, but, but, if what you are describing to me, you know, I'm troubled by it and I'm

going to find out what happened and then I'm going to let you know what I find out as fast as I can.²⁶⁴

Aguirre made no comments in this exchange that would have exposed the City to any potential liability in relation to the geological phenomenon that took place earlier that day. Aguirre closed the meeting and said:

Aguirre: Okay, here's what we're going to do, here's what we're going to do. Look, I think we'll only need this one night but we've got the room here tomorrow at 6 p.m. So, we'll come back tomorrow. I'll have a lot more answers. We'll have the City Council person here. We'll get things organized so everyone knows you know what the deal is. But here's, here's what my thought is on your prescriptions and things like that, you're just going to have to go to the drug store and get another prescription. I know that's going to be a really big inconvenience.²⁶⁵

Based on the evidence presented in the transcript of the 3 October 2007 meeting that the City Attorney held with residents of Mount Soledad, no comments were made to expose the City to any additional liability.

Meanwhile, the day after the disruptive geological phenomenon struck the tranquil La Jolla hillside, the City Council held an emergency meeting on 4 October 2007 to discuss the problem. Mayor Sanders stated to the City Council:

As of today, I have been told by the City's geologist, Rob Hawk, that there is no evidence that this happened as the result of a failure of a City utility, be it water or wastewater.²⁶⁶

Sanders signaled that Hawk's opinion was not the final word on the issue and added that more study needed to occur to determine the exact case or causes of the dirt migration on Soledad Mountain Road. Sanders, like Aguirre, then asked everyone to suspend judgment until the matter was "thoroughly" investigated. Sanders said:

I would ask that everyone, and I repeat, everyone, suspend judgment on this subject until we are able to thoroughly, thoughtfully, deliberately, able to determine in an objective fashion the circumstances that led to this

²⁶⁴ See at *Id.*

²⁶⁵ See at *Id.*

²⁶⁶ Transcript of Mayor Jerry Sanders comments at the 4 October 2007 special meeting of the San Diego City Council. (Exhibit 161)

catastrophic failure. To do otherwise would be a disservice to the residents affected and our community as a whole.²⁶⁷

Sanders also stated that the City would conduct an investigation to find the cause of the hillside soil migration.

At the City Council meeting, City Attorney Aguirre read into the record the letter sent to residents of Soledad Mountain Road which described the high-lining work on the water pipe. After reading the letter, Aguirre stated:

I also think that statements made regarding potential liability, in the future I agree that there should not be any statements made that the City has liability for this, on a going forward basis. However, it is also important that we put out the truth, and the public know that, what the facts are... So, the geotechnical expert was hired and was actually involved...the geotechnical expert was hired and was in fact trying to find out what the cause and had the equipment in the ground when the slide occurred.²⁶⁸

These facts were all known to the residents of Soledad Mountain Road as they received the letter, had spoken to City geologists about the work, and many saw the engineers on site the morning of the slide. These comments did not expose the City to liability. Aguirre added:

I think that what we are after as a City is the truth. If we don't believe that taxpayers should be responsible for geotechnical developments in area in which people were fully informed of the risks that they were taking. The best way for us to make sure that the City and the taxpayers are protected is to be the source of reliable, honest information. And that's what I believe our policy should be from a legal point of view. And I also believe that we should not be discussing this in closed session unless there is a very specific reason to do so, which I have yet to hear.²⁶⁹

Meanwhile, in sharp contrast with the City Attorney's comments, the Mayor's Office definitively stated to numerous news agencies that there was evidence of problems on Soledad Mountain Road, but nothing that indicated that a disruptive geological phenomenon, such as a landslide, could strike. A media report issued on 5 October 2007 stated:

San Diego officials have known about the most recent landslide threat on Soledad Mountain Road since July.

²⁶⁷ See at *Id.*

²⁶⁸ Transcript of City Attorney Michael Aguirre's comments at the 4 October 2007 meeting of the San Diego City Council. (Exhibit 162)

²⁶⁹ See at *Id.*

The mayor's office was first alerted to a problem on July 19, when Councilman Faulconer's office reported potential leaks and soil movement, mayoral spokesman Fred Sainz said.

The city immediately began investigating and monitoring the situation, but no evidence existed that a landslide was imminent, Sainz said.²⁷⁰

The Mayor's Office continued to state publicly that the City had no responsibility in creating the landslide and that the City had given its maximum efforts to deal with water leaks on Mount Soledad that began in July and continued sporadically through the day of the event.

In contrast, Aguirre appeared on a local radio show and discussed the geological phenomenon with radio personality Roger Hedgecock. The conversation was focused on the issue of water leakage underground at the site.

Hedgecock: Do you think, based on any evidence you've seen in the last 24 hours since this slide up on Mount Soledad, that the city did anything wrong?

Aguirre: Well, the one thing we did that was wrong has been, since this happened, not tell the truth about what we knew. For example, on the 19th of September, we wrote to the Soledad Mountain homeowners, our chief engineer, that there have been a series of water leaks on service connections from our main water line on your street and that we were hiring a geotechnical consultant to conduct a soil investigation in the area to determine the cause of the recent leaks. I don't believe that the city of San Diego has any liability for what happened but I think we do have a responsibility to make sure that whatever information we put out is accurate and information that people can rely upon.

This is the crucial point that Aguirre tried to communicate: the distinction that evidence existed that the City admitted that water leaks occurred. This evidence came in the form of a series of letters written and delivered to Mount Soledad residents. This point is completely separate from the allegation – which Aguirre did not support – that the water leaks played a role in causing the slide. The conversation continued.

Hedgecock: Was that inaccurate?

²⁷⁰ Sauer, Mark; "Experts probe La Jolla hillside | Cause of landslide sought; most get OK to return to homes; *San Diego Union-Tribune*; 5 October 2007. (Exhibit 163)

Aguirre: Well, what I just read is accurate. What has been said by some, I think, has not been as consistent with that statement as I think it should have been.

Hedgecock: OK, what do you mean?

Aguirre: Well, I mean, we wrote people on Sept. 19 telling them that there have been a series of water leaks on the connections from the main water line on Soledad Mountain Road where the cave-in took place. And other people have said "Oh no, there wasn't any water leaking over there." I think that is incorrect, one ...²⁷¹

It is important to note that the Mayor, at this point, had said that no water leaks had occurred on Soledad Mountain Road. Aguirre's comments sought to point out that the Mayor's statement was not true as illustrated by this fact: The City sent a letter to residents of Soledad Mountain Road that stated that water pipes were leaking underground and they must be moved above ground to prevent further damage. Aguirre's comment to Hedgecock did not expose the City to liability because Aguirre made no connection to the water leaks and the cause of the landslide. In fact, Aguirre had urged suspending any judgment about the cause of the landslide until geotechnical investigations were complete. The conversation between Hedgecock and Aguirre continued:

Hedgecock: Who's saying that?

Aguirre: Well, I don't want to get into personalities but let me just say that it's important that individuals who are speaking for the city, remember that; uh, I went through a complete review today; we have settled almost every single slide case that has been brought in the city of San Diego and the most important thing is to make sure we have insurance coverage. And when individuals make comments that might interfere with that that actually compromises the city's legal position. I have retained expert insurance legal counsel. We have gone back and are doing a very careful legal analysis of all the legal elements that are in play here in terms of any potential causes of action for dangerous conditions or for inverse condemnation and we need to make sure that the statements being made are either not made at all or are consistent with the city's best legal position.²⁷²

²⁷¹ Lewis, Scott; "Landslide Liability | A little back and forth for your Friday evening"; *Voice of San Diego*; 6 October 2007. (Exhibit 164)

²⁷² See at *Id.*

Aguirre continued:

Aguirre: I think what you want to be careful of though is that if you have potential exposure, that you don't do something that negates your insurance coverage. And as I said to you before, we've handled numerous slide cases in the city of San Diego and all of them have been settled and the most important thing is to make sure we have the resources to deal with the problem. I will say this: If you live in the city of San Diego and your house is impacted in the way that occurred here where there's obviously going to be roads that have to be repaired, houses that are going to have to be repaired, money is going to have to be secured from the federal government for emergency purposes and the rest of it, I think that our primary focus has to be to make sure we have the resources to do the reconstruction. You're not going to leave all these houses abandoned on the side of the road and I think the most important thing is we address this in the most mature way possible recognizing what our legal interests are. I will tell you that what I'm telling you and what I'm doing is going to be the least expensive for the taxpayers and if people go out and try to pretend that facts are other than they are, that will be the most expensive.
...²⁷³

In these statements, Aguirre made no comment that implied or admitted that the City contributed to the cause of the landslide. It is important to note that a statement that cited the historical record of the City's settlements with homeowners on Mount Soledad for past geological movements does not expose the City to liability in the 3 October 2007 landslide. Aguirre also called for the City to stop making statements that there were not water leaks on Mount Soledad because there was evidence – including a series of letters from the City to homeowners – that water leaks underground were problematic enough to high-line water pipes and hire a geotechnical firm. These comments to Hedgecock were in no way made to connect the water leaks as the cause of the landslide.

Mayor Sanders attended a community forum for the residents of Soledad Mountain hosted by Council Member Kevin Faulconer on 6 October 2007. Sanders told attendees that the goals at the meeting were to first, listen to concerns; and second, to update residents with the most current information. Sanders stated:

I'm here to listen to whatever it is you want to tell me. But, I'm going to rely on an investigation being done before I start saying, um, saying definitive things that, I don't want to get caught out there on a limb and

²⁷³

See at *Id.*

then find out it went one way and the other way. I don't think that benefits any of us. So, we will be listening. We want to know how to, how to access each of you so that we can give either daily updates, or bi-weekly updates, weekly updates, so that you know exactly what is going on in the quickest possible manner.²⁷⁴

This comment is strikingly similar to the comments that the City Attorney made to attendees of his 3 October 2007 community forum. Both told attendees that no comments would be made about the cause of the landslide pending the completion of an investigation at the site.

At the Faulconer community forum, the Mayor also provided information to residents about different portions of the investigation. First, the Mayor described the role of state investigators representing disaster relief agencies. Sanders said:

[S]o the state sent their investigators out yesterday morning, first thing, ah, they have been around the mountain now and combed the area and we've given them preliminary estimates now. We don't really have a good idea about what it is going to cost yet. We don't really have a good idea what it's going to cost for in terms to the housing, as, what are the damages. Ah, we don't have an idea [what] it's going to cost, ah, for the roadway. So, we are putting in some estimates and to get that going with the federal government.²⁷⁵

This portion of the statements did not yield very much information. Sanders stated, in short, that the work was too premature to comment on cost estimates.

The second focus by Sanders was the geologist hired by the City to repair the hillside. Sanders stated:

We have also hired a, ah, firm, ah, to go out and start planning how we stabilize the area; how we rebuild the roadway; and how we stabilize that entire slide area, so that we do that in a way [that] doesn't cause more damages as we do that. Now, that is not a short process. That's probably going to take several weeks for them to determine how the movement is going or how you stop the movement and then how you repair is in such a way that the fix lasts for a long term.²⁷⁶

Here, the Mayor also avoided mentioning the work done on the hillside regarding homes. All of the Mayor's statements were focused on the work done to the street specifically.

²⁷⁴ Transcript of 6 October 2007 community forum for La Jolla Landslide victims, hosted by Council member Kevin Faulconer. (Exhibit 165)

²⁷⁵ See at *Id.*

²⁷⁶ See at *Id.*

Sanders then shifted focus to the firm contracted by the City to perform the investigation to determine the cause of the landslide.

The other firm that we hired is a forensic firm and they are looking back to, and they are the ones that are drilling some of the holes right now to see along with the others to determine how it occurred, why it occurred, what the causes of it were, ah, so that we can report back. And that's part of the investigation that I think is critically important as we move forward. We need to know what caused the slide. We need to know how it was caused and we need, we need a time line as to when the events were. So, that's where we are working, putting together now.²⁷⁷

Sanders, again, made no comment regarding the cause of the geological movement. He only discussed the start of an investigation to find out what that cause was.

It is clear from the record of these numerous statements from Mayor Jerry Sanders and City Attorney Michael Aguirre that neither party made any comments to jeopardize the City's legal position in any potential lawsuit from homeowners on Mount Soledad.

OUTSIDE COUNSEL

The San Diego City Charter states that the elected City Attorney shall serve as chief legal counsel to the City on all legal matters. Charter § 40 states in relevant part:²⁷⁸

The City Attorney shall be the chief legal adviser of, and attorney for the City and all Departments and offices thereof in matters relating to their official powers and duties... It shall be the City Attorney's duty, either personally or by such assistants as he or she may designate, to perform all services incident to the legal department...to prosecute or defend, as the case may be, all suits or cases to which the City may be a party...

The City Attorney shall have charge and custody of all legal papers, books, and dockets belonging to the City pertaining to his office, and, upon a receipt therefore, may demand and receive from any officer of the City any book, paper, documents, or evidence necessary to be used in any suit, or required for the purpose of the office.²⁷⁹

²⁷⁷ See at *Id.*

²⁷⁸ San Diego City Charter § 40. (Exhibit 166)

²⁷⁹ See at *Id.*

The City Charter clearly designates that the City Attorney shall be the public legal counsel to represent the City in “all suits or cases to which the City may be a party.”

The evidence provided illustrates that the City Attorney made no comments that could jeopardize the legal position of the City. Moreover, the evidence illustrates that the Mayor provided an inaccurate characterization of the City Attorney’s comments. The Mayor then acted in contravention of the City Charter and hired outside counsel to represent the City in cases where the City Charter identified the City Attorney as the legal representative and requires that he “shall” perform that work.

In spite of the record which illustrated that no admissions were made by the City Attorney, the Mayor’s Office stated that his office would hire outside legal counsel to represent the City in any lawsuits related to the damaging earth shift on Mount Soledad. The item was scheduled for a Closed Session meeting of the City Council on 8 October 2007.²⁸⁰ The docket stated:

The Mayor requests that the City Council consider the retention of outside counsel and other actions as necessary, in anticipation of litigation regarding the recent geological movement on Mount Soledad.²⁸¹

The City Council went into a closed session meeting on the evening of 9 October 2007 to discuss the issue. A local media outlet reported on the outcome of the meeting:

At Mayor Jerry Sanders’ request, the City Council voted 6-2 behind closed doors last night to hire an outside consultant to represent San Diego in cases brought against the city related to the landslide.

Council Members Donna Frye and Tony Young cast the dissenting votes.²⁸²

The City Council thereby voted to take a case away from the City Attorney before any cases were filed.

Mayor Jerry Sanders held a news conference on 10 October 2007 and fielded questions from reporters about urging the City Council to hire outside legal counsel to represent the City on lawsuits related to the geological phenomenon on Mount Soledad. Sanders stated:

²⁸⁰ Agenda for the 8 October 2007 Closed Session meeting of the San Diego City Council. (Exhibit 167)

²⁸¹ See at *Id.*

²⁸² “Aguirre to represent San Diego in landslide litigation;” *North County Times*; 10 October 2007. (Exhibit 168)

I think we need an objective third party that can come in and help us prepare a case for whatever eventuality comes forward. I think that what we are looking forward to is an objective investigation that will determine what the causes of those were. It appears to me that the City Attorney has already decided what his course of action is, one that he has not consulted with the [City] Council on, that he has not consulted with me on. We absolutely need to have legal advice on this and we are not receiving it.²⁸³

Sanders continued:

And it makes it very difficult when the City Attorney has taken a position by himself and then we are supposed to figure out what the legal advice is on that, when the City Attorney has already determined the course of action, not asking us what we think about it. So, we need objective advice. We need good, sound legal advice on some issues.²⁸⁴

It is clear from the complete transcriptions of Aguirre's comments and news coverage after the slide that the City Attorney did not make comments to jeopardize the City, nor did the City Attorney "take a position," nor did he execute a "course of action." The record clearly reflects that Mayor Sanders' comment is factually inaccurate.

The Mayor issued a letter to the City Council on 16 October 2007 that announced the hiring of the San Diego-based law firm, Butz Dunn & DeSantis, to represent the City in all suits related to the geological phenomenon on Mount Soledad. A local newspaper report stated:

Critics of Aguirre's handling of the Soledad Mountain Road slide fear he could have left the city vulnerable to liability because of statements he made regarding water-line breaks.²⁸⁵

It is worth noting that the author of the media report included no direct quotes of the comments that allegedly "left the city vulnerable to liability," as the author wrote in the story.

The decision by the City Council to seek outside counsel to represent the City in the matter regarding the Mount Soledad geological phenomenon is a direct contravention of the City Charter. While Charter § 40 does allow the City Council to employ outside counsel, it does so on express and limited terms. Charter § 40 states:

²⁸³ Transcript Mayor Jerry Sanders new conference on 10 October 2007. (Exhibit 169)

²⁸⁴ See at *Id.*

²⁸⁵ Vigil, Jennifer; "City attorney replaced on landslide legal issues"; *San Diego Union-Tribune*; 17 October 2007. (Exhibit 170)

The Council shall have authority to employ additional competent technical legal attorneys to investigate or prosecute matters connected with the departments of the City when such assistance or advice is necessary in connection therewith.²⁸⁶

What is notable in this section is that the City Council's ability to employ outside counsel is limited to (1) employing additional counsel to work with the City Attorney's Office and (2) only for investigation and prosecution of matters. By the express terms of the City Charter, the City Council does not have unilateral power to employ outside counsel to defend actions in which the City is a party. Butz Dunn & DeSantis was retained to defend the City in all suits related to the geological phenomenon on Mount Soledad. Based on Charter § 40, that action is void.

CONCLUSION

Charter Section 40 states that, "It shall be the City Attorney's duty ... to prosecute or defend, as the case may be, all suits or cases to which the City may be a party" The Mayor and the City Council replaced the City Attorney in this matter because they believed he acted imprudently and too hastily, and thus, compromised the City. However, the thousands of documents released by the Mayor paint quite a different picture of the events that led up to the geological event that occurred on Mount Soledad.

The now public documents support the fact that the City Attorney was simply telling the public what the affected residents of Mount Soledad already knew and had been complaining about for months.

This comprehensive review of all media coverage and community forums related to the event unequivocally shows that the City Attorney never once compromised the City's legal position. The City Attorney should be reinstated as the lead legal counsel to the City in all legal matters related to the soil movement that occurred on Mount Soledad on 3 October 2007.

By _____
Michael Aguirre
San Diego City Attorney

²⁸⁶ San Diego City Charter § 40. (Exhibit 166)